

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



76-1429

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United States Court of Appeals  
FOR THE SECOND CIRCUIT

Docket No. 76-1429

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UNITED STATES OF AMERICA,  
*Appellant,*

—v.—

ELISEO SANCHEZ RUEDA,  
*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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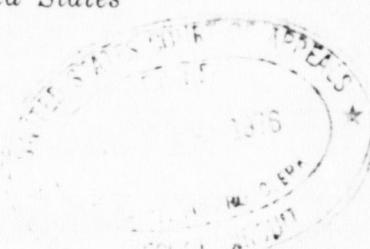
**APPENDIX FOR THE UNITED STATES OF AMERICA**

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ROBERT B. FISKE, JR.,  
*United States Attorney for the  
Southern District of New York,  
Attorney for the United States  
of America.*

AUDREY STRAUSS,  
*Assistant United States Attorney,  
Of Counsel.*

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**PAGINATION AS IN ORIGINAL COPY**

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76 CP 0625

DUFFY,

7-15-76 PRE-TRIAL CONFERENCE HELD & CONCLUDED. DEFT RUEDA MOVES FOR BAIL REDUCTION "GRANTED" Bail REDUCED to \$35,000 CASH. DEFT REMANDED in Lieu of New Bail Set. DEFT PENA is Directed to Appear before a Magistrate for Assignment of Counsel. 10 Days for motions. Trial to commence August 25, 1976. Proceedings were interpreted to BOTH DEFTS by Carmen Espinal. DUFFY, J.

7-16-76 Issued Remand

7-29-76 Conference held & concluded..Deft present with interpreter..Duffy, J. *7-29-76* 3 1

8-3-76 Filed memorandum and order #44888 The government seized \$10,000 from deft. in what admittedly was an illegal search of his room\*\* The monies seized are to be returned to the deft...Duffy, J..... (Mailed notice) *8-3-76* 3 1

8-3-76 Conference held & concluded..Deft produced in Court with interpreter Dena Kohn...Cont d. remanded in lieu of bail..Duffy, J. *8-3-76* 3 1

8-3-76 P.M. Defense motion(Oral)to discharge deft from custody of the U.S. Marshal & for deft to be released on his own recognizance is GRANTED.....DUFFY, J.

8-6-76 Filed Temporary Commitment Dated 6-26-76. SCHREIBER, U.S. MAG.

8-18-76 Filed Re-nd dated 7-15-76

8-17-76 Filed discharge dated 8-3-76

8-18-76 Filed Order to Show Cause.. why an order should not be entered staying the jeopardy assessment and directing the return of \$11,000... Ret. 8-19-76 at 2 P.M..... WERF, J.

8-18-76 Filed memorandum of law in support of Order to Show Cause.

8-18-76 Filed affidavit of Ivan S. Fisher in support of relief requested in Order to Show Cause.

8-19-76 Deft. not present in Court.. Conference held and concluded.

8-19-76 B/F ordered. Bail set on D/W in the sum of \$200,000. cash only.. DUFFY, J.

8-27-76 Filed Government's memorandum of law in opposition to motion to suppress.

8-27-76 Filed Government's Bill of Particulars.

8-27-76 Filed Government's memorandum of law in opposition to D/A/C

8-27-76 Filed reply memorandum of law to Government's opposition to deft's request for an injunction, etc..

(CONT'D--PAGE # 3)

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DATE	PROCEEDINGS	A	3
8-27-76	Filed affdvt. of Edmond J. Foy dated 8-18-76		
8-27-76	Filed affdvt. of Michael H. Fallik dated 8-19-76		
8-27-76	Filed affdvt. of Arleen Zack dated 8-18-76		
8-27-76	Filed deft. affdvt. and notice of motion for an order to discover and inspect, bill of particulars and to suppress, etc..		
8-27-76	Filed affdvt. of Federico E. Virella, Jr., USA, in response to deft's motion.		
8-27-76	Hearing began re: Motion to suppress evidence	3 -	8-19-76 - E-1
20-76	Hearing cont'd.. Adj. to 8-23-76	3 -	8-20-76 - E-1
23-76	Hearing cont'd... Adj. to 8-25-76	3 -	8-23-76 - E-1
25-76	Hearing cont'd.	3 -	8-25-76 - E-1
26-76	Hearing cont'd and concluded. See transcript dated this day for Court's decision on various motions.	2 -	8-26-76 - E-1
8-28-76	Filed transcript of record of proceedings dated 8-19, 20-1976; 8-23, 8-25, 8-26, 1976. So ordered-DUFFY, J. (pg. 367). Filed notice.		
9-24-76	Filed Govt's Notice of Appeal to USCA 2nd Circuit from order of 8-31-76, Duffy, J. granting motions by defts Rueda and Pena. Notices Mailed to: Ivan S. Fisher, Esq. 410 Park Ave. NYC 10022 and David Zapp, Esq. 205 West 25th Street, NYC 10001.		
9-24-76	Filed Govt's Certification pursuant to 18 U.S.C. §3731.		
10-8-76	Filed transcript of proceedings dated July 14-1976		
10-8-76	Filed transcript of proceedings dated July 15-1976		
10-8-76	Filed transcript of proceedings dated August 3-1976		
10-8-76	Filed transcript of proceedings dated ,August 3-1976		
10-8-76	Filed transcript of proceedings dated July 7, 1976		
10-8-76	Filed transcript of proceedings dated July 29, 1976		

0860 02- CAMARO, ALPHONZO  
0205/01 Indicted as Jesus P. Pena a/k/a  
"El Viejito"  
21:846 & 963 Consp. to viol. Fed. Narco. Laws &  
import Cocaine II.

07 06 76 0625 02  
02

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9/24

KEY DATE

3:00 a.m.  
6/26/76

7-6-76

8-25-76

7-8-76 P

P

MAGISTRATE

6/26/76  
7/6/76 S.S.080E

X

6/26/76 S.S.080E

21 USC 812,841(a)(1),841(b)(1)(A) and 846 - NARCOTICS

Federico E. Virella, Jr.  
791-1984

ATTORNEYS X  
David S. Zapp 205 W. 25th St. NYC  
212-243-8650

01 - RUEDA

6/26/76 Complaint filed, Legal Aid assigned for bail only. Defendant to ret-in own counsel. Defendant remanded into the custody of U.S. Marshal in lieu of \$50,000 cash or surety.  
6/29/76 Notice of Appearance filed by Nicholas Figueroa, Esq., 277 Broadway, N.Y.  
6/29/76 Notice of Appearance substituted by Edwin Torres, 3785 Broadway, N.Y.  
Ball reduction denied.  
7/6/76 Defendant filed, 76 Cr. 628  
7-8-76 D.C. (Custody of U.S. Marshal) (Atty. Nicholas Figueroa) pleads not guilty  
Bail \$50,000 cash/surety continued. Deft continued remanded in lieu of  
bail. (Interpreter Maria Elena Cardenas sworn) Case assigned to Judge  
Duffy for all purposes.  
7-9-76 Filed the following papers received from Mag. Schreiber (Mag. No. 76  
criminal complaint, SDNY, Disposition sheet, Order appointing  
counsel (Fed. Defender Services Unit) and notices of appearance  
of attys. Nicholas Figueroa, Irving Katcher, 277 B'way 10007  
'76 4-6-76 - (Edwin Torres, 3785 Broadway, NYC AD 4-0775 for  
arraignment only)

DEFENDANT'S ATTORNEY'S DOCKET ENTRY SHEET - 1976		CONFIDENTIALITY AGREEMENT OR EXCUSORY CLAUSE PER 18 U.S.C. § 6335.	76 CR 0625
DATE	76 CR 0625		
7-14-76	PRE-TRIAL CONFERENCE HELD & CONCLUDED . Interpreter and Defendants Present with their counsel. DUFFY, J	DUFFY, J	
7-15-76	PRE-TRIAL CONFERENCE HELD & CONCLUDED. DEFT <u>RUEDA</u> MOVES FOR BAIL REDUCTION "GRANTED" Bail REDUCED to \$35,000 CASH. DEFT REMANDED in Lieu of Bail Set. DEFT PENN is Directed to Appear before a Magistrate for Assignment of Counsel. 10 Days for motions. Trial to commence August 25, 1976. Proceedings were interpreted to BOTH DEFTS by Carmen Espinal.DUFFY, J		A 5
7-27-76	Filed Financial Affidavit.		
7-29-76	Filed notice of appearance by David DiZapp 205 W. 25th St. NYC		
7-29-76	Conference held & concluded..Deft present with interpreter..Duffy, J.	3 8-3-76 E 1	
7-30-76	Filed affirmation and notice of motion for an order reducing the bail....		
7-30-76	Filed affirmation and notice of motion for an order to furnish deft with certain information necessary to the proper presentation of his defense(bill of particulars)		
7-30-76	Filed affirmation and notice of motion for an order precluding the Govt. from using illegally seized property.....		
8-3-76	Conference held & concluded..deft produced in Court with interpreter Dena John..Deft cont d. remanded in lieu of bail. Duffy, J.....	3 8-3-76 E 1	
8-12-76	Filed memo endorsed on motion filed 7-30-76.. I find that a hearing is necessary on these claims. The matter will be heard the morning of trial.. So ordered- DUFFY, J. (m/n)		
8-12-76	Filed memo endorsed on motion filed 7-30-76 for an order to reduce bail.. Motion denied. So ordered- DUFFY, J. (m/n)		
8-12-76	Filed memo endorsed on motion( for discovery and inspection of certain material in the possession of the government) filed 7-30-76.... to the extent that I have indicated that the government has consented to produce the materials, the motion is denied as moot.. In all other respects, the motion is disposed of as indicated.. So ordered- DUFFY, J. ( m/n)		E
8-19-76	Deft. present.. Conference held and concluded.		3 8-19-76 E 1
8-27-76	Filed Government's memorandum of law in opposition to motion to suppress.		
8-27-76	Filed Government's memorandum in opposition to motion to suppress certain evidence.		
8-27-76	Filed Government's Bill of Particulars.		
8-28-76	Filed appearance bond in the sum of \$ 400.00 dated 8-28-76 (CLERK --PAGE 6 2)		



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v -

: INDICTMENT

ELISEO SANCHEZ RUEADA,  
a/k/a "Eugardo Orozco", and  
JESUS PENA P.,  
a/k/a "Alphonzo Camargo",  
a/k/a "El Viejito",

: 76 Cr.

Defendants. :

-----x  
The Grand Jury charges:

1. From on or about the 1st day of February, 1976 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ELISEO SANCHEZ RUEADA, a/k/a "Eugardo Orozco", JESUS PENA P., a/k/a "Alphonzo Camargo, a/k/a "El Viejito", the defendants, and Ana Lupe Rodriguez, a/k/a "Cynthia Maria McGlynn", and John Doe, a/k/a "Fabio", named herein as co-conspirators but not as defendants, and others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1), 841(b)(1)(A), 952(a), 960(a)(1), and 960(b)(1) of Title 21, United States Code.

2. It was further part of said conspiracy that the said defendants and others unknown to the Grand Jury, unlawfully, intentionally and knowingly would import into the United States from places outside thereof, to wit, Columbia, South America, quantities of cocaine, a Schedule II narcotic drug controlled substance, the exact amount being unknown to the Grand Jury, in violation of Sections 812, 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

A 8 3. It was further part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute cocaine, a Schedule II narcotic drug controlled substance, the exact amount thereof being to the Grand Jury unknown in violation of Section 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about February, 1976 the defendant, ELISEO SANCHEZ RUEDA, a/k/a "Eugardo Orozco", gave Ana Lupe Rodriguez, a/k/a "Cynthia Maria McGlynn", a false passport under the name of Cynthia Maria McGlynn to travel to New York, New York.
2. During the latter part of February, 1976 to the early part of March, 1976 co-conspirator Ana Lupe Rodriguez, a/k/a "Cynthia Maria McGlynn", and the defendant, JESUS PENA P., a/k/a "Alphonzo Camargo", a/k/a "El Viejito", travelled from Columbia, South America to Curacao and to San Juan, Puerto Rico, and from San Juan to Philadelphia via an airplane flight.
3. In or about March, 1976, the defendant JESUS PENA P., a/k/a "Alphonzo Camargo", a/k/a "El Viejito", and co-conspirator Ana Lupe Rodriguez, a/k/a "Cynthia Maria McGlynn", travelled from Philadelphia, Pennsylvania to New York, New York via a bus.
4. In or about March, 1976 the defendant JESUS PENA P., a/k/a "Alphonzo Camargo", a/k/a "El Viejito", and co-conspirator Ana Lupe Rodriguez, a/k/a "Cynthia Maria McGlynn" rented a room at the Penn Terminal Hotel, 215 West 34th Street, New York, New York.

5. In or about March, 1976 the defendants JESUS PENA P., a/k/a "Alphonzo Camargo", a/k/a "El Viejito", and ELISEO SANCHEZ RUKDA, a/k/a "Eugardo Orezco", had a telephone conversation.

6. In or about March, 1976, the defendant JESUS PENA P., a/k/a "Alphonzo Camargo", a/k/a "El Viejito", had a conversation with co-conspirator John Doe, a/k/a "Fabie", in New York, New York.

7. In or about March, 1976 the defendant JESUS PENA P., a/k/a "Alphonzo Camargo", a/k/a "El Viejito", and co-conspirator Ana Lupe Rodriguez, a/k/a "Cynthia Maria McGlynn", travelled from Philadelphia, Pennsylvania to San Juan, Puerto Rico to Curacao to Columbia via an airplane flight.

8. In or about June, 1976 in Columbia, South America, the defendant ELISEO SANCHEZ RUKDA, a/k/a "Eugardo Orezco", and co-conspirator Ana Lupe Rodriguez, a/k/a "Cynthia Maria McGlynn", had a conversation.

9. In or about June, 1976 in Columbia, South America the defendant ELISEO SANCHEZ RUKDA, a/k/a "Eugardo Orezco", gave co-conspirator Ana Lupe Rodriguez, a/k/a "Cynthia Maria McGlynn", a suitcase with a false bottom compartment containing approximately three kilograms of cocaine to be delivered to him at the McAlpin Hotel on 34th Street in New York, New York.

10. In or about June, 1976 co-conspirator Ana Lupe Rodriguez, a/k/a "Cynthia Maria McGlynn", travelled from Columbia, South America to Curacao to San Juan, Puerto Rico via an airplane.

11. On or about June 24, 1976 co-conspirator Ana Lupe Rodriguez, a/k/a "Cynthia Maria McGlynn", possessed approximately three kilograms of cocaine in a suitcase in San Juan, Puerto Rico.

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12. On or about June 25, 1976 the defendant ELISEO SANCHEZ RUEDA, a/k/a "Eugardo Orozco", had a conversation with co-conspirator Ana Lupe Rodriguez, a/k/a "Cynthia Maria McGlynn", at the McAlpin Hotel on 34th Street in New York, New York.

13. On or about June 25, 1976 the defendant JESUS PENA P., a/k/a "Alphonzo Camargo", a/k/a "El Viejito", had in his possession approximately \$69,000 in cash at the Hotel Holland 351 West 42nd Street, New York, New York.

(Title 21, United States Code, Sections 846 and 963.)

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FOREMAN

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ROBERT B. FISKE, JR.  
United States Attorney

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

A 11

-----X  
UNITED STATES OF AMERICA

v.

ALFONSO CAMARGO, ELISEO SANCHEZ RUEDA

NOTICE OF MOTION

INDICTMENT NO. 76 CR 625

(KTD) 76-2175

PLEASE TAKE NOTICE that upon the annexed affirmation of the undersigned, motion will be made before the Honorable Kevin T. Duffy, a Judge of the United States District Court for the Southern District of New York, at the United States Courthouse located at Foley Square in the City of New York, at a time and place in the Courthouse to be determined by the Judge for an order precluding the Government from using property seized illegally as evidence against me and for such other relief as this Court deems just and proper.

Yours etc.,

TO: Robert Fiske, Esq.  
United States Attorney  
for the Southern District  
of New York  
1 St. Andrews Plaza  
New York, New York  
ATTENTION: Frederic Virella

David S. Zapp  
205 West 25th Street  
New York, New York 10001  
(212) 243-8650  
Attorney for Defendant  
Alfonso Camargo

Clerk of the Court  
United States District Court  
Southern District of New York  
Foley Square  
New York, New York 10007

A 12

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

v.

: INDICTMENT NO. 76 CR 625

ALFONSO CAMARGO ELISEO SANCHEZ RUEDA

: (KTD)

-----X  
County of New York)  
                         ) SS.:  
State of New York )

ALFONSO CAMARGO, being duly sworn, deposes and  
says the following:

1. My name is Alfonso Camargo and I am one of  
the defendants in the above entitled criminal action, and I  
live in the City of Bogota, country of Colombia, South America.

2. I write this affidavit through my attorney  
in support of my motion to suppress property of mine seized  
from my hotel room in the early morning of June 26, 1976.

3. On or about June 26, 1976, I was awakened  
at three or four in the morning by a loud knock on my door.  
I immediately called the desk clerk of the hotel and told him  
that some "drunks" were knocking on my door. He said he would  
be right up and in a few moments I heard his voice outside saying  
that there were some men here from the immigration department.

I opened the door and saw the clerk. The next thing I knew there were several men pushing their way into my room. They patted me down and proceeded to look underneath the bed and in the closet. They pointed to my bags and asked me what was in there. I told them there was some money. The suitcases were locked; they were holding the keys.

4. They took me out of the room and brought me to their offices. They told me that I should tell them everything I knew. I told them that I had nothing to say to them.

5. They they said that the money I had in my room would not be safe there. and that it would be better if they went back for the money. They said the money would be safe with them. They said they could not get the suitcase containing the money without my permission and that if I did not want to risk losing the money by leaving it in the room, I should write out an authorization for them to take the suitcase.

6. At no time did they inform me that the money might be used as evidence against me, or that I had a right to consult with friends or an attorney before I allowed them to go into my room and take my suitcase out, or that I most certainly would not recover the money. This incident occurred in the early hours of the morning of June 21, 1976.

7. Furthermore, my property was seized after my arrest and the arrest itself was without warrant based on a hunch rather than probable cause.

8. The agents who had arrested me told me that they had arrested a Mr. Eliseo Sanchez, and they found written on a match book cover or a slip of paper a phone number and a hotel room number which lead them to my room. They told me that the only reason they were there is because my number and my room number appeared on this slip of paper. When they approached the door, they knocked furiously and later told the clerk that they were "representatives from the Immigration Department who wanted to ask me a few questions." Based on that representation I opened the door and was immediately frisked and arrested.

9. WHEREFORE, the evidence seized from me in the above described manner should be suppressed and the Government precluded from using it as evidence against me at any future proceeding.

DATED: New York, New York

Sworn to before me this  
day of July, 1976:

Alfonso Camargo  
ALFONSO CAMARGO

DAVID S. ZAPP  
New York City  
No. 31-40195-36  
On the 10th day of July, 1977  
County of New York  
Commence at 10:00 A.M., March 10, 1977

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

A 15

-----X  
UNITED STATES OF AMERICA,

: -against- : 76 CR 625  
ELISEO SANCHEZ RUEDA, : 76-2175  
a/k/a EUGARDO ROZCO, : NOTICE OF MOTION

Defendant.  
-----X

SIR:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Ivan S. Fisher, Eliseo Sanchez Rueda, the defendant above named, will move this Honorable Court at a date and time convenient to the Court, for an order granting the following relief:

1. Directing the government to permit the defendant, pursuant to Rule 16, F.R.C.P., to discover and inspect:

¶ a) A list of the names and addresses of any and all witnesses whom the government intends to call to testify on its behalf at the trial of the above captioned case; or in the alternative,

¶ b) A list of the names of any such witnesses now in the custody of the government, together with the institution or institutions at which any such witness is incarcerated, whether or not located in the Southern District of New York; or, in the alternative,

¶ c) A list of the names of any such witnesses now in the protective custody of the government;

¶ 2. Directing the government to disclose to the defendants whether or not any co-defendant in this case has become a co-operating individual;

3. Directing the government to disclose to the defendant

A 16

substantially in advance of trial any and all information now in its possession or which, through the exercise of due diligence could be brought within its possession which will have obvious value to the defense in impeaching the credibility of any government witness, including but not limited to any and all promises made by any agent or employee of the United States government or any other law enforcement agency, state or federal to give or bestow anything of value to any government witness in exchange for his prospective testimony against the defendant above named, and any and all records of criminal activity on the part of any government witness whether or not any such record may now be in the hands of the United States government, any state or political subdivision thereof, any foreign country or any international police agency;

4. Directing the government to include within its Bill of Particulars in the above captioned case the names of any and all persons known to be present at the time and place of any of the overt acts alleged in the indictment herein;

5. Suppressing any and all evidence obtained as the result of the illegal arrest of the defendant above named together with any and all evidence obtained by the government through the exploitation of that primary illegality;

6. Granting leave to the defendant to make such other and further motions as may be appropriate upon the government's compliance with any order of this Court granting the relief sought in sub paragraphs 1, 2, 3 and 4 above; and

7. Granting such other and further relief as to the

A 17

Court may seem just and proper.

Yours, etc.

IVAN S. FISHER, Esq.  
Attorney for Defendant  
410 Park Avenue  
New York, New York 10022  
212/355-2380

TO: Federico Virella  
Assistant United States Attorney  
Southern District New York  
1 Saint Andrew Plaza  
New York, New York 10007

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----X  
UNITED STATES OF AMERICA,-----X  
-against-  
-----XELISEO SANCHEZ RUEDA,  
a/k/a EUGARDO OROZCO,-----X  
AFFIDAVIT

Defendant.

-----X  
STATE OF NEW YORK )  
                         )  ss.;  
COUNTY OF NEW YORK)

IVAN S. FISHER, being duly sworn, deposes and says:

I am the attorney for the defendant, Eliseo Sanchez Rueda and make this affidavit in support of various pre-trial motions as delineated in detail below.

Pursuant to the notice of this Court, on July 13th and 14th, I met with Assistant United States Attorney Federico E. Virella, Jr. the prosecutor in this case and discussed with him motions relating to pre-trial motions, discover, inspection, Bill of Particulars and the like. On July 19, 1976, I wrote a letter to Mr. Virella summarizing my recollection of the substance of these discussions, a copy of which is annexed hereto and marked EXHIBIT "A".

Indictment No. 76 CR 625 charges the defendant Eliseo Sanchez Rueda and others with a conspiracy to violate the federal narcotic laws commencing an order about February 1, 1976 through and including the date of the filing of this indictment. In support of this allegation, the government, in its indictment, has charged thirteen overt acts.

Taking the indictment together with the complaint, 76-742 which originated legal proceedings in this case together with the results of my investigation including but not limited to conversations with Assistant United States Attorney Virella, a familiar pattern emerges. Sometime prior to the arrest of the defendant, June 25, 1976, a woman named Ana Lupe

Rodriguez was arrested in Puerto Rico in possession of a suitcase containing approximately three kilos of cocaine. Some time after her arrest, she became a cooperating individual for the D.E.A. It was this "cooperation" that led to the defendant's arrest.

Acting on the basis of information provided by Ms. Rodriguez, agents of the D.E.A. proceeded to the McAlpin Hotel in New York City on June 25, 1976, and there observed Ms. Rodriguez meeting with the defendant, Eliseo Sanchez Rueda. Fortunately, Ms. Rodriguez had been equipped with a concealed recording device and I am informed that a tape recording exists preserving the conversation between Ms. Rodriguez and Mr. Rueda.

Eliseo Sanchez Rueda and Ms. Rodriguez having first met in the lobby of the hotel, proceeded first to the defendant's hotel room and from there to the hallway en route to her room. They never reached their destination. En route, in the hallway, Eliseo Sanchez Rueda was arrested. No warrant for his arrest, for the search of his person or of his hotel room that followed, was sought or obtained by the United States government.

As of the date of this Affidavit I have yet to receive any written communication from the government responding to my letter of July 19th, which, I am informed, the government did not receive until sometime thereafter. However, I am informed by Mr. Virella that he has prepared a letter which he has read to an associate of mine over the telephone. The results of that conversation reveal that the government has consented to much of the discovery, inspection, and request for a Bill of Particulars sought by the defendant. However,

much is not all, and significant discovery is objected to by the government. Needless to say, the government also opposes our motion to suppress.

A. Discovery of Government Witnesses

At the pre-trial conference, the government declared its opposition to a defense request for discovery of a list of government witnesses. The government also opposed the alternative requests for a list of witnesses currently in government custody or protective custody.

As the cases make clear, both the letter and the spirit of the Rules militate in favor of the disclosure of government witnesses. Unless the government can affirmatively

demonstrate a need for concealment of the identities of its witnesses, the request on its face is for information material and relevant within the meaning of Rule 16, and should be granted. Rule 16(a)(4), F.R.C.P., A.B.A. Standards Relating to Discovery § 2.1 (iv) (Approved Draft, 1970)

Here, moreover, the request for discovery is stated in alternative terms. Thus, even assuming, arguendo, that the government can establish a need for concealment based upon colorably legitimate fears of threats, intimidation or other concerns for the safety and security of its witnesses, such objections to discovery would not reach the alternative defense requests for the names of those witnesses now in custody or protective custody. The government's desire for secrecy must, at least with respect to these requests, give way to the defendant's need to adequately prepare his defense.

United States v. Baum, 482 F.2d 1325, 1331 (2d Cir. 1973)

United States v. Cannone, 526 F.2d 296 (2d Cir. 1975)

Moreover, the need for discovery is particularly acute here. Trial is scheduled to commence in this case on August 25th. The time for a thorough pre-trial investigation is correspondingly short. As the indictment makes clear the principal locus of the defendant's activities was Colombia, South America. Thus, any effective investigation may necessitate the interviewing of persons in a foreign country thousands of miles away. This, therefore, is a case where full discovery is absolutely essential for the adequate preparation of the defendant's case.

B. Discovery of the Names of Cooperating  
Defendants

The government has opposed disclosing the names

of any defendants who are now cooperating with the government, in spite of the fact that this possibility raises grave Sixth Amendment issues. The government may argue that it has no intention of intruding upon the councils of the defense. But any such representation, made in good faith, would not be sufficient to adequately guarantee the integrity of the attorney-client privilege or the Sixth Amendment right of the defendant to the effective assistance of counsel. For if any defendant is now cooperating with the government, the very real potential exists that the government, however inadvertently, may become the beneficiary of privileged or otherwise legally protected information. By its representation, the government can not diminish the risk that such information will be come at from unsolicited or unknown or concealed sources within the defense camp.

C. Brady Request for Information of

Obvious Impeachment Value

I am informed by Mr. Virella that although the government consents to disclosing to the defendant the substance of any promises made to any of its witnesses, and the criminal history of its witnesses, the government opposes disclosing this information in advance of trial, and takes the position that it will fulfill the defense request for this information at the time of the disclosures of 3500 material.

In light of the imminence of trial, the government's delay in responding to the defense requests for discovery, the failure of the government to this day to have responded in writing much less to have actually turned over that information

it has agreed to disclose and the fact that adequate defense preparation may necessitate a trip to South America, this position taken by the government is risible. It requires no demonstration to show that the value of discovering information of obvious importance in impeaching government witnesses diminishes as the time for pre-trial preparation shortens. Accordingly, I respectfully request that the Court direct the government to disclose the information sought here well in advance of trial.

D. Amplification of Bill of Particulars

While the government has agreed to furnish information respecting the date, time and place wherein the overt acts cited in the indictment are alleged to have occurred, the government refuses to inform me with respect to the identities of the persons present at the relevant times and places. Again, the need for an adequate opportunity to prepare a defense justify our request. We are, in this case, not involved in a situation where the defendant's allegedly criminal conduct occurred within the Southern District. Rather, we are presented with a situation in which those acts and declarations of the defendant which will be alleged by the government as giving criminal color to his activities in the United States all occurred thousands of miles away.

E. Suppression

Pursuant to Rule 41(f) of the F.R.C.P., the defendant moves to suppress evidence obtained as the result of his illegal and warrantless arrest, together with any and all evidence obtained by the government through the exploitation

A 24

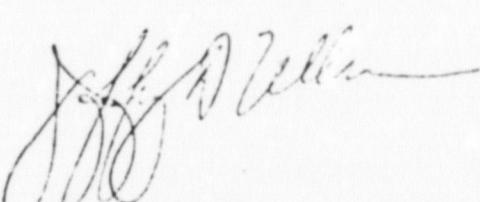
of that arrest, and tainted by it.

WHEREFORE, your deponent prays that the relief sought herein be granted.

Ivan S. Fisher

Dated: New York, New York  
August 11, 1976

Sworn to before me this 11th  
day of August, 1976



JEFFREY D. ULLMAN  
Notary Public, State of New York  
No. 24-4622548  
Qualified in Kings County  
Commission Expires March 30, 19....

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WV: kce

A 25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
UNITED STATES OF AMERICA, :

-v-

76 Cr. 623 (KED)

JESUS PENA P., a/k/a  
"Alfonso Camargo," et al. :

Defendant. :

MEMORANDUM IN OPPOSITION TO  
DEFENDANT PENA'S MOTION TO  
SUPPRESS CERTAIN EVIDENCE

FRANCIS B. VIRELLA, JR.  
United States Attorney for the  
Southern District of New York  
Attorney for the United States  
of America

FRANCIS B. VIRELLA, JR.  
Assistant United States Attorney

- Of Counsel -

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----X  
UNITED STATES OF AMERICA,

-v-

76 Cr. 625 (KID)

JESUS PENA P., a/k/a  
"Alfonso Camargo," et al.Defendant.  
-----XMEMORANDUM IN OPPOSITION TO  
DEFENDANT PENA'S MOTION TO  
SUPPRESS CERTAIN EVIDENCE

By a notice of motion dated July 20, 1976 and served on the United States Attorney's Office on July 30, 1976, defendant Pena has moved this Court to suppress approximately \$1,000 in cash which were seized from the defendant's hotel room during a lawful consent search thereof on June 26, 1976 by agents of the Drug Enforcement Administration. This motion is clearly meritless on the facts of this case and the law applicable thereto. For the reasons stated below, the motion should be denied in its entirety.

STATEMENT OF FACTS

On June 26, 1976 at approximately 1:15 A.M. co-defendant Elises Sanchez Rueda was arrested by agents of the Drug Enforcement Administration for violations of the federal conspiracy narcotics laws after a meeting with a co-conspirator in the Mc Alpin Hotel in New York City. After his arrest, federal agents were informed by the co-conspirator Ana Lupa Rodriguez

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that Rueda was working with a partner whom she described as an old man with the name of Alfonso. The need for swift action to locate and arrest this partner, both to secure any evidence against destruction and to prevent the flight of the partner following the arrest of Rueda, is obvious.

An address noted on the cover of a match book found in Rueda at the time of his arrest led agents Richard Crawford, Edward Magnuson and Edward Kelley of the Drug Enforcement Administration at 2:30 A. M. on June 26, 1976 to Room 1110 of the Hotel Holland, located at 351 West 42nd Street. Upon their arrival at the Hotel the agents were informed by the hotel clerk that room 1110 was registered to a man by the name of Alfonso Camargo from Bogota, Columbia. The agents then proceeded to room 1110 where they knocked on the door and identified themselves as agents from the United States Immigration Department. However, at this time the defendant refused to open the door to his room. Consequently, the agents requested and obtained the assistance of the hotel clerk who came to room 1110 to identify the agents to the defendant. When the defendant opened the door, agents identified themselves and observed that the defendant matched the description of the partner previously supplied by the co-conspirator Rodriguez.

A 28  
PEV:kcc The agents then requested the defendant to return with them to their office for questioning since they were unable to speak fluent Spanish. The defendant agreed and was transported to the New York Regional Office of the Drug Enforcement Administration at 3:10 A.M. At no time had the defendant been placed under arrest by the agents.

At the Regional Office the defendant was interviewed by agents Andreas Amador, Jeff Hall, Crawford, and Kelley. The defendant denied knowing Rodriguez and Rueda when shown photographs of the two individuals. After Rodriguez entered the interview room and identified the defendant as the partner, he recanted and admitted knowing her. Agent Amador then placed the defendant under arrest and advised him of his constitutional rights in Spanish.

The defendant then told the agents that he was in New York on a business trip and stated that he had \$60,000 in cash in his hotel room. At agent Amador's request the defendant gave a written consent, in Spanish, to have his hotel room searched. [Copy of said consent is attached hereto as Ex. 1 and its translation as Ex. 1A] Prior to writing said consent agent Amador explained to the defendant (approximately five to six times) at length that anything found as a result of the search might and

would be used as evidence against him in a court of law. Thereafter, the agents returned to the hotel and room 1110 where they claimed the \$69,000 in cash. The defendant now argues that the seizure of the \$69,000 should be suppressed on the ground that the consent was obtained through trickery. The claim is without merit.

ANALYSIS

The law is well-established and the Government so concedes that it has the burden of proving that the consent was freely and voluntarily given. Schneckloth v. Bustamante, 412 U.S. 218 (1973). This burden is particularly heavy when a defendant is in custody. United States v. Gaines, 441 F.2d 1122, 1123 (2d Cir. 1971). There was neither coercion nor trickery of any kind here. The defendant freely and voluntarily consented to the search.

It is important to note that the defendant was not placed under arrest for violating the federal narcotics laws until after he was identified by the co-conspirator. After he was placed under arrest agent Andress advised him of his Miranda rights in Spanish. Consequently, the defendant volunteered the information that he had money in his hotel room. It was then that Amador requested that he sign a written consent to have the agents search the hotel room. This the defendant provided but not before Amador thoroughly and several times, as previously stated, advised the defendant that

FEV:kec anything seized from the hotel room would be used as evidence against him. It was then that the defendant wrote his consent in Spanish.

The Second Circuit has held that even the defendant's knowledge that the search will produce evidence demonstrating his guilt does not taint a voluntary consent.

United States ex rel. Lundergan v. McMann, 417 F.2d 519, 521 (2d Cir. 1969). The defendant knew the money was located in the premises to be searched, he knew that he had been arrested on a narcotics violation, and he knew that any items seized in the hotel room would be used against him in a trial. There was no deception, trickery, or duress applied by the agents. The consent was not only given unequivocally, specifically and intelligently, but also freely and voluntarily as the defendant so wrote.

See, United States v. Como, 340 F.2d 891, 893 (2d Cir.1965).

The defendant intelligently and knowingly waived any rights to prevent the search of his hotel room by his own execution of the written consent. Moreover, armed, as he was, with Amador's warning that the evidence seized would be used against him, the defendant clearly and unambiguously consented.

#### CONCLUSION

Under the facts and circumstances of this case, and the authorities cited herein, there was no impropriety in the consent to search the hotel premises of the defendant in June 26, 1976.

PEV:kco

WHEREAS, The Government respectfully requests  
that the defendant's motion be, in all respects, denied.

Respectfully submitted,

ROBERT B. FISKE, JR.  
United States Attorney for the  
Southern District of New York  
Attorney for the United States  
of America

FEDERICO E. VIRELLA, JR.  
Assistant United States Attorney

- Of Counsel -

or Purchase \_\_\_\_\_

Sealing Official S. J. S. M. R. C. R.

Witnessing Official W. J. S. M. R. C. R.

Lab No. \_\_\_\_\_

Date Opened By Lab. \_\_\_\_\_

Gross Wt. After Analysis \_\_\_\_\_

EX # 1

A 32

APR 6/76  
APR 6/76

26 de Junio 1976

Alfonso Camargo

Completo facultad, autorizó a los agentes federales  
a registrarse en el cuarto en #80474 Holman

el numero de mi cuarto es 1110

Doy seña constante fibra, y voluntarie muestro

en que no hay un comedor, ni phentido, made.

Alfonso Camargo

June 26/76

EX#1A

A 33

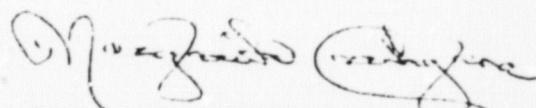
I, ALFONSO CAMARGO HAVING ALL MY FACULTIES, AUTHORIZE THE FEDERAL AGENTS TO SEARCH MY ROOM IN HOLLAND HOTEL. THE NUMBER OF MY ROOM IS 1110. I GIVE THIS CONSENT FREELY AND VOLUNTARILY WITHOUT HAVING BEEN THREATENED NOR HAVING BEEN PROMISSED ANYTHING.

(Signed)

ALFONSO CAMARGO

---

I, Margarita Cartagena, do hereby certify that the above is a true and correct translation of the original document.

  
Margarita Cartagena  
Interpreter & Translator

AFFIDAVIT OF MAILING

A 34

STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss.:

Federico E. Virella, Jr., being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

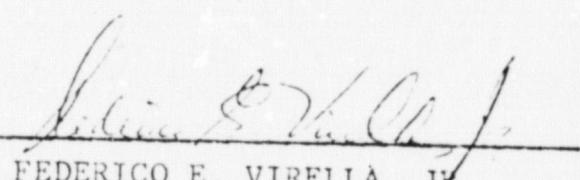
That on the 9th day of August , 1976, he served a copy of the within brief by placing the same in a properly postpaid franked envelope addressed:

David S. Zapp, Esq.  
205 West 25th Street  
New York, New York 10001

And deponent further says that he sealed the said envelope and placed the same in the mail box for mailing at One St. Andrew's Plaza, Borough of Manhattan, City of New York.

Sworn to before me this

9th day of August, 1976

  
FEDERICO E. VIRELLA, JR.

JEANETTE ANN GRAYEB  
Notary Public, State of New York  
No. 201-1470  
Qualifying Oct. 18, County  
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----  
UNITED STATES OF AMERICA, :

-v-

: 76 Cr. 625 (KTD)

LLISEO SANCHEZ RUEDA,  
a/k/a "Eugardo Orozco,"  
JESUS PENA P.,  
a/k/a "Alphonzo Camargo",  
a/k/a "El Viejito,"

Defendants. :

----- x

GOVERNMENT'S MEMORANDUM  
OF LAW IN OPPOSITION

The Government respectfully submits this memorandum of law in opposition to defendants' motion to suppress all statements made and items seized after the defendants' arrest which they claim to be invalid on the ground that there was no probable cause for their arrests. Alternatively, the defendant Camarago moves that the \$69,000 seized from his hotel room pursuant to his written consent should be suppressed on the grounds that said consent was not

voluntarily given. For the following reasons defendants' motions should be denied.

Statement of the Facts

On June 24, 1976 at the San Juan, Puerto Rico International Airport co-conspirator Ana Lupe Rodriguez was detained by United States Customs agents and then arrested by Drug Enforcement Administration [DEA] agent Andras Amador for violation of the federal narcotics laws. When arrested, she had in her possession a false Costa Rican passport bearing the name Cynthia Maria McClinn and a pink Samsonite suitcase concealing three kilograms of cocaine. She was advised of her constitutional rights and taken to the DEA office. Subsequently, she agreed to cooperate with the Government.

As a result of her cooperation, Rodriguez told Agent Amador that in Bogata, Colombia on June 22, 1976 she had received the suitcase with the cocaine from co-defendant Eliseo Sanchez Rueda. She was to carry the suitcase on a circuitous route to New York City and there deliver it to co-defendant Sanchez in the Hotel McAlpin. She further revealed that she had made a trial run of this delivery in February traveling with Sanchez' partner, co-defendant Alphonzo Camargo. As part of her cooperation with the Government, Ana Lupe Rodriguez agreed to participate

in a "controlled delivery" of the pink suitcase to Sanchez in New York, the delivery to be under the physical and electronic surveillance of DEA agents.

On the evening of June 25, 1976, after furnishing a full description of co-defendants Eliseo Sanchez Rueda and Alfonso Camargo, she was outfitted with Kel and Nagra electronic transmitting and recording devices, and checked into a room next door to the agents' room at the Hotel McAlpin located in New York City. She telephoned her mother in Sonata who reported that Sanchez Rueda had called her asking for Ana.

Carrying the concealed electronic devices and under the observation of DEA agents, she met co-defendant Sanchez in the hotel lobby. They went out on the street, returned to that hotel, and went to his room. Later, both exited his room and were walking toward her room when they were arrested in the hotel corridor by the DEA agents at approximately 1:15 am on the morning of June 26, 1976. Sanchez was advised of his constitutional rights in Spanish. Co-defendant Sanchez identified himself as Eduardo Orozco and he denied previously knowing Ana Lupe Rodriguez. Agent Atador searched Sanchez Rueda and found a matchbook with a phone and a room number written on it. When asked to cooperate, Sanchez told the agents he couldn't cooperate

because he would be killed right away if he did. He further told them with regard to the cocaine that he was "clean," and that he had nothing when he was arrested. Shortly thereafter, DEA agents learned that the telephone number written on the seized matchbook was listed to the Hotel Holland located at 351 West 42nd Street in New York. Agents Richard Crawford, Edward Magnuson, and Edward Kelly went to the Hotel Holland at 2:30 a.m. on June 26, 1976 and were informed by the desk clerk, James Vega, that the room number from the matchbook was registered to a man by the name of Alfonso Camargo from Bogata, Colombia.

The agents then proceeded to that room, number 1110, where they knocked on the door and identified themselves in Spanish as federal "police." The occupant of the room telephoned the desk clerk who told him in Spanish that the men at his door were federal agents. The desk clerk then went up to the room and identified himself and the agents through the door. When Camargo opened the door, the agents displayed their identification, and entered the room. The agents found that the defendant was alone in the room and they observed that he fit the description, furnished by Ana Lupe Rodriguez of the old man who was co-defendant Sanchez' partner. The agents requested that Camargo return with them

to their office for questioning. When he was dressed, he was patted down by the agents and a set of small keys removed from his pockets and placed on the dresser. The hotel room was secured and he was transported to the DEA office at approximately 3:00 a.m.

At the DEA Office he was taken to an interview room where he was questioned and shown photographs of Ana Lupe Rodriguez and Eliseo Sanchez Rueda. Camargo denied knowing or recognizing either of them. When Ana Lupe Rodriguez was brought into the interview, she identified the co-defendant as Alfonso Camargo. He then recanted and admitted knowing her. Agent Amador then placed Camargo under arrest and advised him of his constitutional rights in Spanish.

Camargo told the agents that he was in New York on business as a money exchanger and that he had \$60,000 in cash in his hotel room. At agent Amador's request co-defendant Camargo gave his written consent, in Spanish, to have his hotel room searched. Prior to granting his consent, Agent Amador explained four or five times in Spanish to Camargo that the defendant had the right to refuse consent, and that anything found as a result of the search might and would be used as evidence against him in a court of law. The

A 46

defendant wrote that the consent was freely and knowingly given and stated verbally that he had nothing illegal in his hotel room.

Thereupon, the agents returned to the Hotel Holland and to Camargo's room which had been secured. With the aid of the desk clerk, James Vega, they entered and conducted a search of Camargo's room. The agents seized \$69,000 in cash which they found in three suitcases and rolled up inside umbrellas, two small keys, a telephone book, a hotel receipt, and a card with numbers written on it. The agents then returned to the DEA office with the items which had been seized.

#### ARGUMENT

##### I. THERE WAS A PROBABLE CAUSE TO ARREST THE DEFENDANTS SANCHEZ AND CAMARGO

Agent Amador and his companion agents' knowledge, information and observations of first, Eliseo Sanchez Rueda, and then second, of Alfonso Camargo gave them sufficient facts and circumstances "to warrant a prudent man in believing that [the defendant was] . . . committing an offense." Raffone v. Adams, 468 F.2d 860, 865 (2d Cir. 1972), citing Beck v. Ohio, 379 U.S. 89, 91 (1964). Accordingly, there was probable cause to arrest the defendants for conspiracy to import cocaine.

The facts set forth above which the Government has shown at the suppression hearing and which will prove at trial reveal that the DEA agents could reasonably have believed that Sanchez and Camargo were part of an international conspiracy to import cocaine because of the following: a) information provided to them by a reliable source, Ana Lupe Rodriguez, a co-conspirator involved in the instant criminal activity; b) their observations made at the scenes of the crime; and c) their investigation flowing from their observations and information.

A. The arrest of the defendant Sanchez

With respect to the arrest of Sanchez the agents possessed more than sufficient probable cause to arrest him. Rodriguez, after being arrested in Puerto Rico provided Amador with a physical description of the defendant and with the information that she received a suitcase containing the seized cocaine from Sanchez in Colombia with the instructions from Sanchez that he would meet her at the McAlpin Hotel in New York City where he would accept delivery of said suitcase. Having received this information from an admitted accomplice, the agents in New York rented two hotel rooms at the McAlpin hotel, outfitted Rodriguez with a kel

recording device and a nagra device, and proceeded to conduct surveillance in the hotel. It was through this surveillance together with the evidence and conversations overheard by Amador through the hearing device he possessed that Sanchez was identified as the man whom Rodriguez had previously described.

It should be noted that the prior information provided by Rodriguez about the events at the McAlpin would in all likelihood have been sufficient probable cause to arrest Sanchez. In any event, Rodriguez' credibility is buttressed by the actual appearance of Sanchez at the McAlpin Hotel. More importantly, however, is the undeniable fact that Rodriguez was making admissions against her own interest. Rodriguez specifically placed herself as part of an international conspiracy to illegally import cocaine into the United States. In this regard, the Supreme Court has stated:

"These statements were against the informant's penal interest, for he thereby admitted major elements of an offense under the Internal Revenue Code... Common sense in the important daily affairs of life would induce a prudent and disinterested observer to credit these statements. People do not lightly admit a crime and place artificial evidence in the hands of the police in the form of their own admissions .... That the informant may be paid or promised a 'break' does not eliminate the residual risk and opprobrium of having admitted criminal conduct." United States v. Harris, 403 U.S. 573, 584-85 (1971).

Based on the foregoing, the agents arrested Sanchez in a hotel corridor, advised him of his Miranda rights and proceeded to search him. At a subsequent search by Amador a matchbook containing a room number and telephone number in its inside cover was found. The fact that the matchbook was not found until a second search moments after the initial arrest and search is immaterial. The law is well-established that "searches and seizures that could be made on the spot at the time of arrest may legally be conducted later when the accused arrives at the place of detention." United States v. Edwards, 415 U.S. 800, 803 (1974). Abel v. United States, 362 U.S. 217 (1960). See also, United States v. Robinson, 414 U.S. 218 (1973); Chimel v. California, 395 U.S. 752, 755 (1969); United States v. Lam Muk Chin, 522 F.2d 330 (2d Cir. 1975); United States ex rel. Muhammed v. Mancusi, 432 F.2d 1046 (2d Cir. 1970), cert. denied, 402 U.S. 911 (1971).

Armed with the information of the matchbook, the agents proceed to investigate and discover that the phone number belonged to the Holland Hotel in the Times Square area. A short time later agents Crawford and Kelly were dispatched to follow-up on this lead.

B. The arrest of the defendant Camargo

Prior to leaving for the Holland Hotel the agents had been informed that Sanchez had a partner who was identified as an 'old man' and that he, too, like Rodriguez and Sanchez was from Colombia.\* Upon arriving at the hotel the agents learned that an Alfonso Camargo from Bogota, Colombia was the occupant of the hotel room number 1110 which appeared on the matchbook seized from Sanchez. With this information the agents went to room 1110 where they met Alfonso Camargo, an "old man" from Bogota, Colombia. After some preliminary questioning he was asked to accompany the agents to DEA offices where he denied knowing Rodriguez and Sanchez when shown photographs of said individuals. Moments later, Rodriguez was brought into the room and identified him as Alfonso Camargo, Sanchez' partner. At this time, the defendant Camargo was placed under arrest.

It is abundantly clear that at the time Rodriguez identified the defendant there was more than sufficient probable cause to arrest him. Here, the agents actually knew that an importation of cocaine had taken place, that

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\* It should be noted that Amador was not sure whether Rodriguez told him that the old man's name was "Alfonso," but, in any event it is clear that a) Sanchez partner in this conspiracy was an old man, b) that he was from Colombia, c) that Rodriguez made a prior trip to the United States with the old man, and d) that the partner was in New York.

Sanchez was to meet Rodriguez and did in fact meet with her in a New York hotel, that Rodriguez had made a prior trip with the 'old man' from Colombia, that the 'old man' was a partner of Sanchez, and that the matchbook information found in Sanchez at the time of his arrest led to an 'old man' from Bogota, Colombia. Finally, the agents were advised by Rodriguez at the DEA offices that the 'old man' in said office was Alfonso Camargo, the partner of Sanchez.

The fact that the defendant's actions -- living at the Holland Hotel -- can be innocently explained, as most likely, counsel for Camargo (and Sanchez) will argue, is totally beside the point, since it was also reasonable for agents with the long experience of these agents to believe that the defendant was participating in a narcotics conspiracy. As the Second Circuit and Supreme Court have noted, "the rule of probable cause is a practical, non-technical conception," Raffone v. Adams, supra, 468 F.2d at 860; Brinegar v. United States, 338 U.S. 160, 176 (1949). Thus, the facts known to the agents here were, arguably, at least as strong as those present in Peters v. New York, 392 U.S. 40, 66 (1968). There the Supreme Court found probable cause to arrest for burglary where an officer heard strange noises at his apartment door, saw two unknown men tiptoeing

in his hallway toward the stairway and the two men fled down the stairs when the officer entered the hallway and slammed his door. Id. 392 U.S. at 48-49, 66; see United States v. Robinson, 414 U.S. 218, 228 (1973). As the court noted in Peters, "It is difficult to conceive of stronger grounds for an arrest, short of actual eye witness observation of criminal activity." 392 U.S. at 66. Here, the agents actually knew a conspiracy to import cocaine had taken place, and that the defendant's presence in the hotel appeared to be connected to that transaction since his room number and hotel telephone number was noted in Sanchez' matchbook. This provides a stronger basis for probable cause than was present in Peters. Moreover, it would appear that the facts in this case which were available to the experienced and prudent federal agents who participated in the investigation of this case are well within the range of facts upon which findings of probable cause have been upheld in this Circuit. See, e.g. United States v. Tramunti, 513 F.2d 1087, 1100-04 (2d Cir. 1975).

Given what information was available to the agents, one must apply the "common sense approach" to such facts observed and information possessed. United States v. Ventresca, 380 U.S. 102, 108-09 (1965). As the Court observed in finding probable cause in Raffone v. Adams, 468 F.2d 360, 866-67 (2d Cir. 1972), each fact cannot be treated in isolation, especially when dealing with an officer's on-the-spot determination of probable cause. Here, as stated previously, the agents were aware of the existence of an international conspiracy to import cocaine, that Rodriguez had made a prior trip to New York with the partner of Sanchez, that the partner was an 'old man' from Colombia, that the partner was in New York, and that an 'old man' from Colombia was staying in the hotel room which appeared in the matchbook which was seized from Sanchez at his arrest.

While each fact standing alone may not have amounted to probable cause, the agents did not act here until the defendant Camargo was identified by the co-conspirator Rodriguez. The combination of facts set forth above was more than enough to amount to probable cause to arrest the defendants at the time he was identified. The Second Circuit's reflection in Raffone v. Adams, supra, 468 F.2d at 867, is particularly appropriate to the facts here:

As we have often observed, probable cause is the sum total of layers of information and the synthesis of what the police have heard, what they know, and what they observe as trained officers. We weigh not individual layers but the 'laminated' total. It has often been repeated, but it bears repetition, that 'In dealing with probable cause, \* \* \* as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act'. Brinegar v. United States, supra 338 U.S. at 175. (emphasis added)

Citing Judge, now Chief Justice, Burger in Smith v. United States, 358 F.2d 833, 837 (D.C. Cir. 1966), cert. denied, 386 U.S. 1003 (1967).

II. THE WRITTEN CONSENT PROVIDED  
BY THE DEFENDANT CAMARO WAS  
VOLUNTARILY GIVEN

The defendant Camargo claims that the written consent he gave agents of DEA after his arrest was not voluntary since he alleges he was "tricked" by the agents into writing said consent. The claim is meritless.

It is well-established that the search of a defendant's premises and the seizure of evidence found therein is lawful despite the absence of a search warrant if made with the defendant's consent. Sehensackloth v. Bustamonte, 412 U.S. 218 (1973). Equally well-settled is the principle of law that consent to search must be "freely and voluntarily given," Bumper v. North Carolina, 391 U.S. 543, 548 (1968), United States v. Mapp, 476 F. 2d 67, 77 (2d Cir. 1973), and this the Government must show by a preponderance of the evidence. United States v. Matlock, 415 U.S. 164, 177 n. 14 (1974); United States v. Oliver, 523 F. 2d 253, 259, (2d Cir. 1975).

In determining whether consent was voluntary this Court must look at the totality of the circumstances which

would reveal that Camargo's consent was ". . . the product of an essentially free and unrestrained choice by its makers". Schenectady v. Bustamante, supra at 225. The factors in which the Government contends indicate voluntariness of the consent are included in the ensuing discussion.

The consent was entirely handwritten and signed by the defendant absent any Government trickery as claimed by the defendant who provided the consent.

United States ex rel. Lundergan v. McMann, 417 F. 2d 519 (2d Cir. 1969); United States v. Gorman, 355 F. 2d 151, 159 (2d Cir. 1965), cert. denied, 384 U.S. 1024 (1966). It should be noted that Camargo provided the written form after he was continually informed by Agent Amador on at least four to five occasions that he did not have to give a consent and that anything found in his hotel room would be used against him in a court of law. Nonetheless, in supporting his claim that he was tricked into consigning his suitcase to the agents for safekeeping, the defendant avers in his affidavit (par. 5) that his consent solely authorized the Government to take his suitcases in his hotel room. However, the written consent executed by Camargo contradicts this narrow claim as it grants a broad

and general authority to search. Moreover, the consent given by Camargo was granted with full knowledge that anything found could be used as evidence against him. Here, unlike United States v. Mapp, 476 F. 2d 67, 78 (2d Cir. 1973), a full and repeated set of Miranda type warnings was given in the defendant's native language. The warnings to the defendant, though not of controlling significance, are important factors in the overall judgment as to the voluntariness of the consent. United States v. Watson, 423 U.S. 411, 424 (1976); United States v. Mapp, supra at 77. The defendant Camargo was able to understand those warnings and consider his grant of consent unlike the uneducated, inexperienced and feeble woman in Temper v. North Carolina, supra at 548-49; or the mentally deficient schizophrenic defendant in Fikage v. Alabama, 352 U.S. 191 (1957). Camargo, by his own admission, is a businessman, foreign currency exchanger and real estate holder. These various careers testify to his intelligence and abilities to understand and to understand matters of a complicated nature.

Further, the defendant's will was not overborne by questioning which was unduly long, Ashcraft v. Tennessee, 322 U.S. 143 (1944); or a detention which was unreasonably

threatening or sustained, Chambers v. Florida, 309 U.S. 227 (1940). See Schneckloth v. Bustamonte, supra at 226. Rather, Camargo's consent was given after slightly less than one hour's questioning at DEA offices. In addition, the defendant's voluntariness can be presumed from his level of cooperation with the agents. Not only did he not deny possession of the seized evidence as in United States v. Lewis, 274 F. Supp. 184, 188 (S.D.N.Y. 1967), but he freely informed the agents of the money's existence, its amount and location, and, more importantly, told the agents that he had nothing to hide. These factors, taken in totality, manifest the entirely voluntary nature and foundation of the defendant Camargo's consent to search.

The fact that the defendant was under arrest and in custody does not negate the voluntariness of the consent. "... Custody alone has never been enough in itself to demonstrate a coerced confession or consent to search." United States v. Watson, supra at 424. There is no evidence, nor does the defendant suggest, that he was "unable in the face of a custodial arrest to exercise a free choice." id. at 424. In fact, Camargo's statement

that he had nothing to hide would at the very minimum indicate an exercise of free choice in his decision to write the consent. This becomes more strikingly apparent in light of the fact that Camargo was told on several occasions that he did not have to give such a consent. The defendant was not "immediately arrested when he opened the door" as is averred in the defendant's affidavit. Rather, it was not until after the co-defendant Rodriguez identified Camargo as the partner of the co-defendant Sanchez that he was arrested. As there was more than sufficient probable cause to support the arrest of Camargo at that time, the subsequent consent to search may not be deemed the product of an illegal arrest. It should be noted that the consent to search was given after the defendant's arrest and after full Miranda warnings were given.\*

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\* The defendant does not claim that the Government agents failed to give him his Miranda rights. Thus at the time the defendant gave his consent to search he had been informed of his right to have an attorney present, contrary to the representation averred in defendant's affidavit in paragraph #6.

Furthermore, it should be pointed out that a strong inference of voluntary consent may arise from the defendant's misapprehension that nothing damaging would be discovered by a search of his hotel room. United States v. Smith, 308 F.2d 657, 663 (2d Cir. 1962), cert. denied, 372 U.S. 906 (1963). Here, the defendant Camargo volunteered the fact that \$60,000 could be found in the room. Arguably, the Government contends that he felt that this would support his story that he was a foreign businessman and as such would have no connection to narcotics importers. Clearly, he did not fear the Government's discovery of these funds since he quickly agreed to provide the consent. The facts here are extremely similar to those in United States v. Dornblut, 261 F.2d 949 (2d Cir. 1958), cert. denied, 360 U.S. 912 (1959), where the defendant knew "that no narcotics could be found in his apartment and, as he never thought that any of the bills. . . . would be tell-tale, he was confident that the stratagem of inviting the agents to search would be the best way of dispelling their suspicions." Id. at 950. As did the Second Circuit in Dornblut, the Court here together with the totality of the circumstances must find in the adoption of such a stratagem the inference that the defendant voluntarily consented to the search of his room.

Accordingly, taking into account the defendant's background, the fact that his Miranda rights were given to him after his arrest the fact that he was advised that he did not have to give a consent and that anything found could be used against him, the defendant's freely made statements concerning the money in the suitcase, the broad scope of the consent, the fact that the consent was written freely and voluntarily by the defendant himself, the apparent contradictions in the defendant's affidavit, the absence of any physical or mental coercion, the short period of time between arrest and the time the defendant wrote the consent, it is respectfully requested that the Court find the consent to be voluntary.

CONCLUSION

Based on all the foregoing fact and the principles of law stated herein, the Government respectfully requests that all of the defendants motions be in all respects denied.

Respectfully submitted,

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- Of Counsel -

A 56

Prior to SG5-6-0  
(inaudible) Special Agent  
Activating Nagra Recorder prior to SG5-6009 meeting with ELISEO SANCHEZ RUEDA date - 22 this is the 25th is it not?

Antes de SG5-6-0 (inaudible) Agente especial  
Activando cinta magnetofonica  
Nagra Antes de encuentro de SG5-6-009 case #GS G5760P22 Con Eliseo Sanchez Rueda  
Fecha - 22 - hoy es el 25?

Unk. Voice: 10 to 1107 (pause) 710  
c 1107 10 a 1107 (pausa) 710  
a 1107

Agent Time approximately 9:32 Hora aproximadamente 9:32

Unk. Voice: 710 to 1107 tha's 1107 710 a 1107 eso es 1107

Agent What's the date today? Cual es la fecha de hoy?

Unk. Voice: Huh? huh?

Agent What's the date today? Cual es la fecha de hoy?

Unk. Voice: 25th El 25.

Agent Thank you. date 6-25-76 Graciao. fecha 6-25-76  
(Long Pause Pausa)  
(Unidentifiable voices)  
(Ruidos no identificables)

(Pause - unintelligible voices)  
(Pausa- Voces ininteligibles)  
Pause - (5 minutes)  
Pausa (5 minutos)

conversation - unintelligible  
conversacion - ininteligible

Unk. Male: Coming down later. He'll be down in the lobby later. (Unknown sound) (Unintelligible) alright. Later, later tonight if you get change, you know (unintelligible sound) ok.

Va a bajar mas tarde. El bajara al lobby mas tarde (Sonido no identificable) esta bien. Mas tarde, mas tarde esta noche si. consigues cambio, tu sabes (sonido no identificable) ok.

(unidentifiable Sound)

Ruidos no identificables

(Long Pause - Pausa)

(Sound of telephone ringing)

Telefono So Nando

Female: Yes, yes (pause) 14 huh? (pause) no one No one. Alright. Alright, Ok. WOW

(Someone sneezes)

Alguien estornuda

(Long Pause - Pausa)

Female singing in Spanish

(Long Pause - Pausa)

(Sounds of Television)

(Sonido de Televisor)

(Long Pause - 10 minutes)

(Pausa - 10 minutes)

(Telephone Ringing)

(Telefono Sonando)

Female: Who? huh? (unintelligible) Quien? huh? (Inintelligible) Yes. Yes. I have it here. Si. Si. Si. Si. (unintelligible) yes (inintelligible) si. (inintelligible)

(unintelligible, No. Ok Yes)

Ok. Yes. Ok. Ok. Yes. Ok

(Unintelligible) Ok. Ok. Ok. Ok.

Quien? huh? (Inintelligible)

Si. Si. Si. Si. Si.

(inintelligible) si. (inintelligible)

si. (inintelligible)

No. Ok. si. Ok. Si.

Ok. Ok. Si. Ok.

(inintelligible) Ok. Ok. Ok.

(Sound of dialing)

(Sonido de Marcar)

Female: Hello. You speak Spanish? Hello. Huh  
Spanish? Hello. Huh  
No. (pause) Ok. Yes

Hello. You speak Spanish  
Hello. Huh? No. (pausa)  
Ok. Si.

(Long Pause)

(Pausa)

(Music in background)

(Musica)

Sounds of voices - unintelligible

Sonido de voces - ininteligibles

(Pause - 30 minutes)

(Pausa - 30 minutos)

( T.V.  
(Voices - Unintelligible)

Televisor

(Voices - inintelligibles)

(Sound of knocking - Sonido de golpear)

Female: Who is it? Quien?

Male Voice: (unintelligible) (inintelligible)

(Sounds of door closing)

(Sonido de Puerta Cerrando)

(End of Se de One)

(Final de Lado # uno)

(Long Pause) (Pausa)

(Telephone Ringing)

Telefono Sonando

Female: (unintelligible) No, Ok (inintelligible) No, Ok  
But (unintelligible) Ok. Pero (inintelligible) Ok.  
(Sound of Knocking) (Sonido de golpeas)

Female: Who is it? Who is it? Quien? Quien?

Male: (Unintelligible) (inintelligible)  
(Unidentifiable Sounds)

(Sonidos No Identificables)

(Sound of Knocking - Sonido de golpeas)

(unidentifiable Sounds)

(Sonidos no identificables)

SA  
Mike Mella: Vagra being re-activated. Vagra re-activada por  
by SA Mella at Agente Especial Mella  
Approximately 10:48 PM. Aproximadamente alias 10:48 PM

(Sounds of Voices - Unintelligible)

Sonido de voces - ininteligibles

MR. F: I've been looking for you, I don't know what happened.

MR. F: I called, I called to the phone company...

MR. F: (Unintelligible)

MR. F: (Unintelligible)

MR. F: (Unintelligible)

MR. F: (Unintelligible) I've been looking for you everywhere.

MR. F: (Unintelligible) my God, what happened, I was very angry, very very angry.

MR. F: (Unintelligible) buy why my love?

MR. F: (Unintelligible) did something happen to you in Puerto Rico?

MR. F: No my love, it wasn't anything I just imagine it was in Barranquilla that it all started...

MR. F: (Unintelligible)

MR. F: No, just imagine that...

MR. F: (Unintelligible)

MR. F: No, imagine that I arrived and I called my mommy and I said to her "mommie..."

MR. F: (Unintelligible)

MR. F: I told her "mommie, just imagine that" (Unintelligible)

MR. F: (Unintelligible)

MR. F: She said, he said "He called me 15 minutes ago and he said that he was there at that hotel" (Unintelligible) he's there and he (Unintelligible)

MR. F: (Unintelligible)

MR. F: (Unintelligible) I called,

MR. F: (Unintelligible) called (Unintelligible) do this night (Unintelligible) I called, he said, I (Unintelligible) this didn't have problem.

MR. F: (Unintelligible) yo me dijo que tu estabas aqui que (Unintelligible)

MR. F: (Unintelligible) yo me he pasado buscandola por todas partes y (Unintelligible) que paso Dijo (Unintelligible) yo estaba mas bravo, estaba tristesimo.

MR. F: (Unintelligible) pero por que mi amor?

MR. F: (Unintelligible) te paso algo en Puerto Rico?

MR. F: No mi amor, no fue nada, imagine que todo empezo fue en Barranquilla...

MR. F: (Unintelligible)

MR. F: No imaginate que...

MR. F: (Unintelligible)

MR. F: No imaginate que yo llegue, llame a mi mami y le dije "Mamita..."

MR. F: (Unintelligible)

MR. F: Le dije "Mamita imaginate que (Unintelligible)

MR. F: (Unintelligible)

MR. F: Me dijo, me dijo "El hace un curro de loco me llamo y te dije que el estaba alli en ese hotel" le dije "Mami yo llegue alli y el" (Unintelligible)

MR. F: (Unintelligible)

MR. F: (Unintelligible) yo llame,

MR. F: (Unintelligible) llamo (Unintelligible) hacia bien la noche (Unintelligible) yo estuve a esperar, yo (Unintelligible) estuve muchacha tuve them problem.

BEST COPY AVAILABLE

ELISEO: ... et (unintelligible) and you know that I got to Barranquilla...  
ANA: ...  
ELISEO: ...  
ANA: ...  
ELISEO: When did you get there?  
ANA: ... Didn't you remember that I left on Tuesday to Barranquilla...  
ELISEO: You got there and you had a flight to, to, to Puerto Rico. I got to Puerto Rico and I was  
ANA: Oh no! (unintelligible) who would have known it.  
ELISEO: Well then tell me what happened.  
ANA: No, no, nothing happened, I lost...  
ELISEO: Your mother told me something and I felt rum! like my head was splitting  
ANA: It's just that she misunderstood me.  
ELISEO: Well then tell me what happened. What happened? Tell me. Tell me about it.  
ANA: Nothing happened.  
ELISEO: No that (unintelligible) had problems over there in Puerto Rico (unintelligible), but tell me where she is because I'm going to Puerto Rico, I'm going (unintelligible)  
ANA: No my love, just imagine that I got to Barranquilla. All the problem started with Barranquilla  
ELISEO: I'm going to call that crazy old man.  
ANA: ... what I said was about the tickets and I'm sure she understood something else (unintelligible) who knows what.  
ELISEO: Let's have a drink

... Tu mama me dice que yo me vine el lunes a Barranquilla...  
...  
Entiendo...  
Cuando llego, el lunes.  
No te acuerdas que yo me vine el martes a Barranquilla.  
Tu llegaste y tenias vuelo para, para, para Puerto Rico. Llegue a Puerto Rico y estuve  
Ay no. (inintelligible) quien lo hubiero sabido.  
Pues dime que paso.  
No, no paso nada perdi...  
Tu mama me dijo algo y rum! se me rompio la cabeza.  
Fue que ella me entiendo, mal...  
Pues digame que paso. Que paso? Digame, cuente...  
No paso nada.  
No que (inintelligible) tuvo problemas alla en Puerto Rico. Ay virgen (inintelligible) pero digame a donde esta porque yo voy para Puerto Rico, yo me voy (inintelligible).  
No mi amor imaginate que yo llegue a Barranquilla. Todo el problema empezo con Barranquilla.  
Voy a llamar al viejo ese loco.  
Yo le dije fue do los pasajes y ella se entiendo seguro algo, otra cosa (inintelligible) quiere saber que.  
Nos vamos a tomar un trago.

ELISEO: (Unintelligible)

ANA: No, well then it's fine... I just imagine I got there early...

ELISEO: (Unintelligible) and in Puerto Rico everything came out alright?

ANA: Yes, everything fine.

ELISEO: There were no problems?

ANA: No, my love, what happened was that since I... I missed the plane in Barranquilla...

ELISEO: (Unintelligible) Where?

ANA: In Barranquilla I missed the plane.

ELISEO: On Tuesday?

ANA: I missed the plane on Tuesday, I had to stay until Wednesday (unintelligible)

ELISEO: (Unintelligible) At what time did you arrive in Barranquilla.

ANA: At about nine.

ELISEO: At nine? In the morning?

ANA: Yes, then...

ELISEO: (Unintelligible) I was in Barranquilla and I left on Tuesday, I left on Tuesday at about 11:30 or 12:00 and I went to (unintelligible) and then they told me "you left" and then well, she'll leave on the same flight with me to Barranquilla (unintelligible) I took a taxi, (unintelligible)

ANA: No, I didn't take a taxi, I took a taxi and I had to stay until the following day.

ELISEO: (Unintelligible)

ANA: No, then, I took a taxi.

ELISEO: Well...

ANA: No, then just imagine I left

ELISEO: (Unintelligible)

ANA: No, entonces en Barranquilla fue imaginate yo llegue temprano...

ELISEO: (Unintelligible) y alla en Puerto Rico todo salio bien?

ANA: Si todo bien.

ELISEO: No hubo problemas?

ANA: No, lo que pase mi amor fue que como yo me, me dejo el avion ese dia en Barranquilla...

ELISEO: (Unintelligible) Donde?

ANA: En Barranquilla me dejo el avion.

ELISEO: El Martes?

ANA: El martes me dejo el avion. Me toco quedarme hasta el miércoles (unintelligible).

ELISEO: (Unintelligible) a que horas tu llego a Barranquilla.

ANA: Ceno a las nueve.

ELISEO: A las nueve? De la mañana?

ANA: Si, entonces...

ELISEO: (Unintelligible) yo estaba en Barranquilla, y sali el Martes sali a las once a las 11:30 o 12:00 y me fui a (unintelligible) entonces me dijeron "ella se fue" y bueno entonces se va en el mismo vuelo con migo, pero yo en Barranquilla (unintelligible) la busque por todas partes (unintelligible)

ANA: No, si en Barranquilla me dejo el avion y me toco quedarme hasta noche en Barranquilla.

ELISEO: (Unintelligible)

ANA: Si, pero, pero, para el tren de donde ibas?

ELISEO: Si.

ANA: No then just imagine I left

No, entonces imaginate, sali

say at about six o'clock  
that's a problem in Barran-  
cuilla because the air line  
that I was going to travel  
on was the K L M.

ELISEO: Yes.

ANA: And the K L M didn't have a  
plane leaving until Saturday.

ELISEO: (unintelligible)

ANA: Huh?

ELISEO: (unintelligible)

ANA: (unintelligible) no, no, it  
was alright, but since I had  
missed the K L M flight there  
is only (unintelligible)  
Curacao from K L M (unintell-  
igible) then I missed it  
(unintelligible) at the latest  
tomorrow for Curacao then (un-  
intelligible) on Aéreo Condo  
flight or something (unintell-  
igible) I left on the following  
day I went to Curacao...

ELISEO: (unintelligible) at what time  
did you get there?

ANA: At about eight.

ELISEO: (unintelligible)

ANA: I think (unintelligible) and I  
was calling and calling to  
Columbia and (unintelligible) I  
don't know what.

ELISEO: (unintelligible) busy, busy  
all the time.

ANA: What a terrible thing if I don't  
see him, my God, what do I do.  
I had to meet him here.

ELISEO: (unintelligible)

ANA: Oh no.

ELISEO: (unintelligible) to the room  
(unintelligible) huh?

ANA: Well, we'll see (unintelli-  
gible)

ELISEO: (Unintelligible)

ANA: We'll talk a little while  
(unintelligible)

Y K L M no salia avion si no  
hasta el Sabado.  
como a las 3:00 porque eso es  
un problema en Barranquilla  
porque la linea por la que yo  
iba a volar era la K L M.

Si.

Y K L M no salia avion si no  
hasta el Sabado.

(inintelligible)

Huh? (inintelligible)

(inintelligible)

(inintelligible) no, no estiba  
bien pero como a mi me habia  
dejado el vuelo de K L M  
no hay si no (inintelligible)  
Curacao de K L M entonces me  
dejeron (inintelligible)  
a mas tardar manana a Curacao  
entonces (inintelligible) en  
pasaje Aereo Condo dia algo  
(inintelligible) me fui al otro  
dia. Me fui al otro dia  
hasta Curacao.

(inintelligible) que hora  
llegaste a la?

Como a las ocho.

(inintelligible)

Yo creo (inintelligible) y yo  
era llamado y llamaba a Colombia  
y (inintelligible) no se que

(inintelligible) ocupado,  
ocupado todo el tiempo.

Que cosa tan terrible si yo  
no lo veo a el que hago,  
Dios Mio. Yo quede de encon-  
trarme con el aqui.

(inintelligible)

Oh no.

(inintelligible) al cuarto  
(inintelligible) huh?

Pues veremos (inintelligible)

(inintelligible)

Hablamos un ratito

(inintelligible)

and I said "Dios, I'm sorry, I'm sorry I had a problem with the telephone."

Yo dije "Dios, me siento mal, porque tuve un problema con el teléfono."

ELISEO: Yes,

Sí,

ANA: Then, since at that time one could hear a terrible noise, she didn't understand what I was telling her.

Entonces, pues como eso se oía un ruido terrible ella no se entendió lo que yo le estaba diciendo.

ELISEO: (Unintelligible)

(Inintelligible)

ANA: No!

No!

ELISEO: (Unintelligible)

(Inintelligible)

ANA: (Unintelligible) yes my love,

(Inintelligible) si mi amor,

ELISEO: (Unintelligible)

(Inintelligible)

ANA: Since when did you arrive?

¿Cuando llegaste?

ELISEO: I was here (unintelligible) three days (unintelligible) (risa) (unintelligible)

Yo estuve aquí (inintelligible) tres días (inintelligible) (risa) (inintelligible)

ANA: (Unintelligible)

(Inintelligible)

ELISEO: (Unintelligible)

(Inintelligible)

ANA: No, just imagine that... the problem

No imaginate que... el problema

ELISEO: (Unintelligible)

(Inintelligible)

ANA: (Unintelligible)

(Inintelligible)

ANA: No, the problem was that from the day I left Barranquilla until the problem started...

No el problema fue que, desde que salí de Barranquilla fue que empezó el problema.

ELISEO: (Unintelligible) Puerto Rico (Unintelligible) there weren't problems

(Inintelligible) Puerto Rico (Inintelligible) no hubo problemas?

ANA: No,

No,

ELISEO: (Unintelligible)

(Inintelligible)

ELISEO: No,

No,

ANA: (Inintelligible) nothing, nothing,

(Inintelligible) nada, nada,

ANA: No, everything went alright

No si todo estuvo lo mejor (Inintelligible)

ELISEO: (Unintelligible)

(Inintelligible)

ANA: No (Inintelligible) just because there were a lot of lights (Unintelligible)

No (Inintelligible) imaginate que habían muchas luces (Inintelligible)

ANA: Well in Curacao (unintelligible) there were (unintelligible)  
ELISEO: (unintelligible) (inintelligible)

ANA: I told her I would call tomorrow. Then she was at ease because she knew that I was here.  
ELISEO: (unintelligible) (inintelligible)

ANA: (unintelligible) I'm here waiting lady.  
ELISEO: (unintelligible)

ANA: Well yes (unintelligible) this room is cold.  
ELISEO: (unintelligible)

ANA: Well yes my love. No, those are some (unintelligible) with so many people traveling and all these planes were completely full and well then I couldn't get one the bus early. I couldn't get it, then you know what I did? I didn't go to Philadelphia. But since everything (unintelligible) Philadelphia  
ELISEO: (unintelligible) did you travel directly?  
ANA: Hum? Yes. I came directly from San Juan to New York.  
ELISEO: Well, and you were in San Juan yesterday?  
ANA: Yes, I was in San Juan yesterday.  
ELISEO: I went to San Juan, I went to the airport (unintelligible) I was in the airport until three.  
ANA: But then you, you, how did you take your route from Barranquilla.  
ELISEO: (unintelligible) (unintelligible) from Barranquilla to Santo Domingo.  
ANA: Hum  
ELISEO: Santo Domingo to Mayaguez, Mayaguez to San Juan.

Pues en Curacao (inintelligible)  
(inintelligible)  
Yo le dije que yo la llamaba mañana. Entonces pues ella estaba mas tranquila porque sabia que ya yo estaba aqui.  
(inintelligible) (inintelligible)  
(inintelligible) estoy aqui esperando senora.  
(inintelligible)  
Pues si (inintelligible) esta frio este cuarto.  
(inintelligible)  
Pues si mi amor. No esas son mas (inintelligible) constante gente que viaja y todo esos aviones eran con cupo completamente, yo no pues encontraba para salir temprano no, y estar aqui temprano. No encontraba entonces sabe yo lo que hice? Yo no fui a Philadelphia. Si no que como todo. I decia Philadelphia.  
(inintelligible) viajo directo?  
Hum? Si. Me vine directo desde San Juan a Nueva York.  
Bueno, y tu estabas ayer en San Juan?  
Si. Yo estaba ayer en San Juan.  
Yo fui a San Juan, fui al aeropuerto (inintelligible) estuve en el aeropuerto hasta las tres.  
Pero entonces tu, tu como hiciste la ruta, de Barranquilla.  
Yo me vine desde (inintelligible) Barranquilla a Santo Domingo.  
Hum  
Santo Domingo a Mayaguez, Mayaguez a San Juan.



private was...it was...it was...  
when I missed the plane in Barranquilla, but it was just that there were a great amount of people. I missed that plane (unintelligible) in Barranquilla, and I arrived...and the old man didn't...

...y el problema es que...  
todo empezo desde que me dejo el avion en Barranquilla, pero era que eran cantidades de gente, me dejo ese avion. (inintelligible) en Barranquilla, y llegue...y el viejo no...

ELISEO: (unintelligible) at what time did you get to Barranquilla?

(inintelligible) a que hora llego a Barranquilla?

ANA: Huh?

Huh?

ELISEO: At what time did the plane arrive at Barranquilla?

El avion a que hora llego a Barranquilla?

ANA: At 9:00 in the morning.

A las 9:00 de la mañana.

ELISEO: (unintelligible)

(inintelligible)

ANA: No on Tuesday (unintelligible) early hours of the morning.

No el martes (inintelligible) madrugada.

ELISEO: (unintelligible)

(inintelligible)

ANA: On Tuesday (unintelligible) Tuesday. I had to stay over on Tuesday and return on Wednesday towards Curacao. By Thursday I was in San Juan. I was just at the center.

El martes (inintelligible) martes. Me toco quedarme ese martes y veni me fui el miércoles para Curacao. El jueves ya estaba en San Juan. Y yo estaba fue el centro.

ELISEO: (unintelligible) I was in San Juan Thursday.

(inintelligible) El jueves estaba yo en San Juan.

ANA: (unintelligible) To San Juan?

(inintelligible) a San Juan

ELISEO: Today?

A hoy?

ANA: Here today.

Hoy aqui.

ELISEO: At what time did you arrive today at the San Juan airport?

A que hora llegaste en San Juan al aeropuerto hoy?

ANA: (unintelligible) At a little past three, I arrived at 3:15.

(inintelligible) como a las tres y pico. A que hora llegaste hoy?

ELISEO: I think that you are lying to me.

Me das la impresion que me estas mintiendo a mi.

ANA: How could I lie to you? About what my love? (unintelligible) how suspicious you are my love. No (unintelligible)

Como te voy a mentir? En que te mentir? (inintelligible) como eres de suspicio mi vida. No (inintelligible)

ELISEO: (unintelligible)

(inintelligible)

BEST COPY AVAILABLE

ELISEO: (laughing) Do you know  
were you with any other old  
lady?

ELISEO: (laughs) Silly

ANA: (unintelligible) such a  
lover and all.

ELISEO: (unintelligible)

ANA: (unintelligible) no I was  
desperate. I hope that I  
get there and I find him  
there...and when I arrived  
and nothing

ANA / ELISEO: (Unintelligible)

ANA: Unintelligible) When I  
arrived here I was checking  
in. I was there in recep-  
tion. I took a while because  
there were more people checking  
in.

ELISEO: (Unintelligible)

ANA: I had a problem with the  
tickets. I'm in Puerto Rico  
then she...must have thought  
that

ELISEO: (unintelligible)

ANA: Huh?

ELISEO: (unintelligible)

ANA: (unintelligible)

(UNIDENTIFIABLE NOISES)

(RUIDOS NO IDENTIFICABLES)

ANA: Oh my God!

ESTA SE PUEDE  
ESTUVISTE CON ALGUNA  
OTRA VIEJA

(rie) tonta

(unintelligible)

mujeriego y todo.

(unintelligible)

(unintelligible) no yo  
estaba desesperada  
ojala que yo llegue y  
lo encuentre ahí y  
cuando llego y nada

(unintelligible)

(unintelligible) Cuando  
llegue aquí registran-  
dome. Yo estuve allí  
en la recepción, me  
demore un poquito por  
que había más gente allí  
Registrando

(unintelligible)

Tuve un problema con los  
pasajes. Estuve en  
Puerto Rico entonces  
ella...pensaría que

(unintelligible)

Huh?

(unintelligible)

(unintelligible)

Ay Dios mio

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NAGRA

FEV:cr

Prior to SG5-6-0 Antes de SG5-6-0 (inaudible)  
(inaudible) Special Agente especial \_\_\_\_\_  
Agent \_\_\_\_\_ Activando cinta magnetofonica  
Activating Nagra Nagra Antes de encuentro de  
Recorder prior to SG5-6-009 caso "GS G5760P22  
SG5-6009 meeting with ELISEO SANCHEZ  
RUEDA date - 22  
this is the 25th is  
it not? Fecha - 22 - hoy es el 25?

Unk. Voice:	10 to 1107 (pause) 710 to 1107	10 a 1107 (pausa) 710 a 1107
Agent	Time approximately 9:32	Hora aproximadamente 9:32
Unk. Voice:	710 to 1107 tha's 1107	710 a 1107 eso es 1107
Agent	What's the date today?	Cual es la fecha de hoy?
Unk. Voice:	Huh?	huh?
Agent	What's the date today?	Cual es la fecha de hoy?
Unk. Voice:	25th	El 25.
Agent	Thank you. date 6-25-76 (Long Pause _____ Pausa) (Unidentifiable voices) (Ruidos no identificables)	Graciao. fecha 6-25-76
	(Pause - unintelligible voices) (Pausa- Voces ininteligibles)	
	Pause - (5 minutes)	
	Pausa (5 minutos)	
	conversation - unintelligible	
	conversacion - ininteligible	

## Un English

Unk. Male: Coming down later. He'll be down in the lobby later. (Unknown sound) (Unintelligible) alright. Later, later tonight if you get change, you know (unidentifiable sound) ok.  
 (unidentifiable Sound)  
 Ruidos no identificables  
 (Long Pause - Pausa)  
 (Sound of telephone ringing)  
 Telefono So Nando

Female: Yes, yes (pause) 14 huh? (pause) no one No one. Alright, Alright, Ok. WOW  
 (Someone sneezes)  
 Alguien estornuda  
 (Long Pause - Pausa)  
 Female singing in Spanish  
 (Long Pause - Pausa)  
 (Sounds of Television)  
 (Sonidoa de Televisor)  
 (Long Pause - 10 minutes)  
 (Pausa - 10 minutes)  
 (Telephone Ringing)  
 (Telefono Sonando)

Female: Who? huh? (unintelligible) Yes. Yes. I have it here. (unintelligible) yes  
 (unintelligible, No. Ok Yes  
 Ok. Yes, Ok. Ok. Yes. Ok  
 (Unintelligible) Ok. Ok. Ok.  
 (Sound of dialing)  
 (Sonido de Marcar)

Va a bajar mas tarde. El bajara al lobby mas tarde (Sonido no identificable) esta bien. Mas tarde, mas tarde esta noche si. consigues cambio, tu sabes (sonido no identificable) ok.

Si, si, (pausa) 14 (pausa) huh? (pausa) Nadie, Nadie. Alright, alright, Ok. WOW

Quien? huh? (Inintelligible)  
 Si Si hai la tengo  
 (inintelligible) si. (inintelligible)  
 No. Ok. si. Ok. Si.  
 Ok. Ok. Si. Ok.  
 (inintelligible) Ok. Ok. Ok.

FEV:cr

Female: Hello, You Speak Spanish? Hello. Huh  
No. (pause) Ok. Yes Hello. Huh? No. (pausa)  
Ok. Si.

(Long Pause)

(Pausa)

(Music in background)

(Musica)

Sounds of voices - unintelligible

Sonido de voces - ininteligibles

(Pause - 30 minutes)

(Pausa - 30 minutos)

( T.V.  
(Voices - Unintelligible)

Televisor

(Voices - inintelligibles)

(Sound of knocking - Sonido de golpear)

Female: Who is it? Quien?

Male Voice: (unintelligible) (inintelligible)

(Sounds of door closing)

(Sonido de Puerta Cerrando)

(End of Se de One)

(Final de Lado # uno)

NAGRA SIDE 2

Nagra LADO 2

(Long Pause) (Pausa)

(Telephone Ringing)

Telefono Sonando

Female: (unintelligible) No, Ok (inintelligible) No, Ok  
But (unintelligible) Ok. Pero (inintelligible) Ok.  
(Sound of Knocking) (Sonido de golpeae)

Female: Who is it? Who is it? Quien? Quien?

Male: (Unintelligible) (inintelligible)  
(Unidentifiable Sounds)  
(Sonidos No Identificables)  
(Sound of Knocking - Sonido de golpeae)  
(unidentifiable Sounds)  
(Sonidos no identificables)

SA  
Mike Mella: Vagra being re-activated Vagra re-activada por  
by SA Mella at Agente Especial Mella  
Approximately 10:48 PM Aproximadamente a las 10:48 PM

(Sounds of Voices - Unintelligible  
Sonido de voces - ininteligibles •

Sounds of person walking (long pauses)  
Music in background

ANA: (unintelligible) (inintelligible)

ELISEO: I've been looking for you everywhere. What happened? Te ando buscando en todas partes. Que paso?

ANA: I called. I just talked to my mommy... Yo llame. Yo acabo de hablar con mi mami...

ELISEO: (unintelligible) (inintelligible)

ANA: ...and she told me that you were here that (unintelligible) ...y ella me dijo que tu estabas aqui que (inintelligible)

ELISEO: (unintelligible) I've been looking for you everywhere (unintelligible) my God, what happened, I was very angry, . . very very angry. (inintelligible) yo me he pasado buscandola por todas partes (inintelligible) que paso Dios mio (inintelligible) yo estaba mas bravo, estaba bravissimo.

ANA: (unintelligible) buy why my love? (inintelligible) pero por que mi amor?

ELISEO: (unintelligible) did something happen to you in Puerto Rico? (inintelligible) te paso algo en Puerto Rico?

ANA: No my love, it wasn't anything just imagine it was in Barranquilla that it all started... No mi amor, no fue nada imajinate que todo empezo fue en Barranquilla...

ELISEO: (Unintelligible) (inintelligible)

ANA: No, just imagine that... No imajinate que...

ELISEO: Unintelligible) (Inintelligible)

ANA: No, imagine that I arrived and I called my mommy and I said to her "mommy..." No imajinate que yo llegue y yo llame a mi mami y le dije "Mamita..."

ELISEO: (Unintelligible) (Inintelligible)

ANA: I told her "mommy, just imagine that (unintelligible) Le dije "Mamita imajinate que (inintelligible)

ELISEO (unintelligible) (inintelligible)

ANA: She said, she said "He called me 15 minutes ago and he said that he was there at that hotel" I said "Mommy I'm there and he (Unintelligible) Me dije, me dije "El hace un cuarto de hora me llamo y me dijo que el estaba alli en ese hotel" le dije "Mami yo llegue alli y el (inintelligible)

ELISEO: (Unintelligible) (inintelligible)

ANA: (Unintelligible) I called. (inintelligible) yo llame.

ELISEO: (unintelligible) called (unintelligible) do things right (unintelligible) I was desperate, I (unintelligible) this girl had some problem. (inintelligible) llamo (inintelligible) haga bien las cosas (inintelligible) yo estaba desesperado, yo (inintelligible) esta muchacha tuvo algun problema.

ANA: No.

ELISEO: Unintelligible)

ANA: Yes (unintelligible) just imagine that I got to Barranquilla...

ELISEO: Yes

ANA: Then...

ELISEO: When did you get there, Monday?

ANA: Don't you remember that I left on Tuesday to Barranquilla...

ELISEO: You got there and you had a flight to, to, to Puerto Rico. I got to Puerto Rico and I was

ANA: Oh no! (unintelligible) who would have known it.

ELISEO: Well then tell me what happened.

ANA: No, no, nothing happened, I lost...

ELISEO: Your mother told me something and I felt rum! like my head was splitting

ANA: It's just that she misunderstood me.

ELISEO: Well then tell me what happened. What happened? Tell me. Tell me about it.

ANA: Nothing happened.

ELISEO: No that (unintelligible) had problems over there in Puerto Rico (unintelligible), but tell me where she is because I'm going to Puerto Rico, I'm going (unintelligible)

ANA: No my love, just imagine that I got to Barranquilla. All the problem started with Barranquilla

ELISEO: I'm going to call that crazy old man.

ANA: What I said was about the tickets and I'm sure she understood something else (unintelligible) who knows what.

ELISEO: Let's have a drink

No.

(inintelligible)

Si (inintelligible) imaginate que yo llegue a Barranquilla...

Si

Entonces...

Cuando llego, el lunes?

No te acuerdas que yo me vine el martes a Barranquilla.

Tu llegaste y tenias vuelo para, para, para Puerto Rico Llegue a Puerto Rico y estuve

Ay no. (inintelligible) quien lo hubiero sabido.

Pues dime que paso.

No, no paso nada perdi...

Tu mama me dijo algo y rum! se me rompio la cabeza.

Fue que ella me entndio mal.

Pues digame que paso. Que paso? Digame, cuenteme.

No paso nada.

No que (inintelligible) tuvo problemas alla en Puerto Rico Ay virgen (intelligible) pero digame a donde esta porque yo voy para Puerto Rico, yo me voy (inintelligible)

No mi amor imaginate que yo llegue a Barranquilla. Todo el problema empezo con Barranquilla.

Voy a llamar al viejo ese loco.

Yo le dije fue do los pasajes y ella me entendio seguro algo otra cosa (inintelligible) quien sabe que.

Nos vamos a tomar un trago.

ANA: Well, if you want we can go to my room and we'll drink there.

ANNA: Because this is ~~like~~ closed (unintelligible)

ELISEO: Unintelligible)

ANA: No, well then in Barranquilla, just imagine I got there early...

ELISEO: Unintelligible) and in Puerto Rico everything came out alright?

ANA: Yes everything fine.

ELISEO: There were no problems?

ANA: No my love, what happened was that since I, I, missed the plane in Barranquilla...

ELISEO: (Unintelligible) Where?

ANA: In Barranquilla I missed the plane.

ELISEO: On Tuesday?

ANA: I missed the plane on Tuesday. I had to stay until Wednesday (unintelligible)

ELISEO: (Unintelligible) At what time did you arrive in Barranquilla.

ANA: At about nine.

ELISEO: At nine? In the morning?

ANA: Yes. Then...

ELISEO: (unintelligible) I was in Barranquilla and I left on Tuesday, I left on Tuesday at about 11:30 or 12:00 and I went to, to (unintelligible) and then they told me "she left" and then well, she'll leave on the same flight with me, but in Barranquilla I (unintelligible) I looked everywhere (unintelligible)

ANA: No, I missed the plane in Barranquilla and I had to stay that night in Barranquilla.

ELISEO: (unintelligible)

ANA: Yes for, for, for the drug traffic?

ELISEO: Yes.

Pues si quiers vamos a mi cuarto y tomamos alla.

Porque esto esta como ~~cerca~~ (inintelligible)

(inintelligible)

No, entonces en Barranquilla Pues imaginate yo llegue temprano...

(inintelligible) y alla en Puerto Rico todo salio bien?

Si todo bien.

No hubo problemas?

No, lo que paso mi amor fue que come yo me, me dejo el avion ese dia en Barranquilla.

(inintelligible) Donde?

En Barranquilla me dejo el avion.

El Martes?

El martes me dejo el avion. Me toco quedarme hasta el miercoles (inintelligible)

(Inintelligible) a que horas llego a Barranquilla.

Como a las nueve.

A las nueve? De la manana?

Si. Entonces...

(ininteligible) yo estaba en Barranquilla, y sali el Martes sali a las coma a las 11:30 o 12:00 y me fui a, a (inintelligible) entonces me dijeron "ella se fue" a bueno entonces se va en el mismo vuelo con migo, pero yo en Barranquilla (inintelligible) la busque por todas partes (inintelligible)

No, si en Barranquilla me dejo el avion y me toco quedarme esa noche en Barranquilla.

(inintelligible)

Si, para, para, para el trafico de drogas?

Si.

ANA: No then just imagine I left Barranquilla the following day at about 3:30 because that's a problem in Barranquilla because the air line that I was going to travel on was the K L M.

No, entonces imaginate, sali de Barranquilla al otro dia como a las 3:30 porque eso es un problema en Barranquilla porque la linea por la que yo iba a volar era la K L M.

ELISEO: Yes.

Si.

ANA: And the K L M didn't have a plane leaving until Saturday.

Y K L M no salia avion si no hasta el Sabado.

ELISEO: (unintelligible)

Inintelligible)

ANA: Huh?

Huh?

ELISEO: (unintelligible)

(unintelligible)

ANA: (unintelligible) no, no, it was alright, but since I had missed the K L M flight there is only (unintelligible) Curacao from K L M (unintelligible) then I missed it (unintelligible) at the latest tomorrow for Curacao then (unintelligible) on Aereo Condo flight or something (unintelligible) I left on the following day I went to Curacao...

(Inintelligible) no, no estaba bien pero como a mi me habia dejado el vuelo de K L M no hay si no (unintelligible) Curacao de K L M entonces me dejaron (inintelligible) a mas tardar manana a Curacao entonces (unintelligible) en pasaje Aereo Condo o algo. (unintelligible) me fui al otro dia. Me fui al otro dia hasta Curacao...

ELISEO: (unintelligible) at what time did you get there?

(unintelligible) A que hora llegaste alla?

ANA: At about eight.

Como a las ocho

ELISEO: (unintelligible)

(unintelligible)

ANA: I think (unintelligible) and I was calling and calling to Columbia and (unintelligible) I don't know what.

Yo creo (unintelligible) y yo era llama y llama a Colombia y (unintelligible) no se que

ELISEO: (unintelligible) busy, busy all the time.

(unintelligible) ocupado, ocupado todo el tiempo.

ANA: What a terrible thing if I don't see him, my God, what do I do. I had to meet him here.

Que cosa tan terrible si yo no lo veo a el que hago, Dios Mio. Yo quede de encontrarme con el aqui.

AN<sup>o</sup> ELISEO: (unintelligible)

(unintelligible)

ANA: Oh no.

Oh no.

ELISEO: (unintelligible) to the room (unintelligible) huh?

(unintelligible) al cuarto (unintelligible) huh?

ANA: Well, we'll see (unintelligible)

Pues veremos (unintelligible)

ELISEO: (Unintelligible)

(unintelligible)

ANA: We'll talk a little while (unintelligible)

Hablamos un ratito (unintelligible)

ELISEO: (unintelligible) (inintelligible)

ANA: No, I called from Puerto Rico and said "Mommy, I'm late because I had a problem with the tickets." No, yo llame de Puerto Rico y le dije, "Mamita me retrasé porque tuve un problema con los pasajes.

ELISEO: Yes. Si.

ANA: Then, since at that time one could hear a terrible noise, she didn't understand what I was telling her. Entonces, pues como eso se oía un ruido terrible ella no me entendió lo que yo le estaba diciendo.

ELISEO: (Unintelligible) (Inintelligible)

ANA: No! No!

ELISEO: (Unintelligible) (inintelligible)

ANA: (Unintelligible) yes my love. (inintelligible) si mi amor.

ELISEO: (Unintelligible) (inintelligible)

ANA: Since when did you arrive? Desde cuando llegaste?

ELISEO: I was here (unintelligible) three days (unintelligible) (laughs) (unintelligible) Yo estuve aquí (inintelligible) tres días (inintelligible) (risa) (inintelligible)

ANA: (unintelligible) (inintelligible)

ELISIO: (unintelligible) (inintelligible)

ANA: No, just imagine that... the problem. No imaginate que...el problema

ELISEO (unintelligible) (inintelligible)

ANA: (unintelligible) (inintelligible)

ELISEO: (unintelligible) (inintelligible)

ANA: No, the problem was that from the time that I left Barranquilla that the problem started... No el problema fue que, desde que salí de Barranquilla fue que empezó el problema...

ELISEO: (unintelligible) Puerto Rico (unintelligible) there weren't any problems? (inintelligible) Puerto Rico (inintelligible) no hubo problemas?

ANA: No. No.

ELISEO: (Unintelligible) (inintelligible)

ANA: No. No.

ELISEO: (unintelligible) nothing, nothing. (inintelligible) nada, nada,

ANA: No everything went alright (unintelligible) No si todo estuvo lo más bien (inintelligible)

ELISEO: (unintelligible) (inintelligible)

ANA: No (unintelligible) just imagine there were a lot of flights (unintelligible) No (inintelligible) imaginate que habían muchos vuelos (inintelligible)

ELISEO: (unintelligible) (inintelligible)

ANA: Well in Curacac (un intelligible) there were (unintelligible) Pues en Curacao (inintelligible)

ELISEO: (unintelligible) (inintelligible)

ANA I told her I would call tomorrow. Then she was at ease because she knew that I was here. Yo le dije que yo la llamaba mañana. Entonces pues ella estaba mas tranquila porque sabia que ya yo estaba aqui.

ELISEO: (unintelligible) (inintelligible) hotel Misgarden

■: (unintelligible) I'm here waiting lady. (inintelligible) estoy aqui esperando senora.

ELISEO: (unintelligible) (inintelligible)

ANA: Well yes (unintelligible) this room is cold. Pues si (inintelligible) esta frio este cuarto.

ELISEO: (unintelligible) (inintelligible)

ANA: Well yes my love. No, those are some (unintelligible) with so many people traveling and all those planes were completely full and well then I couldn't get one to leave early. I couldn't get it then you know what I did: I didn't go to Philadelphia. But since everything (unintelligible) Philadelphia Pues si mi amor. No esas son unas (inintelligible) con tanta gente que viaja y todo esos aviones eran con cupo completo y yo no pues encontraba para salir temprano no, y estar aqui temprano. No encontraba, entonces sabe yo lo que n. se? Yo no fui a Philadelphia. Sino que como todo...decia Philadelphia.

ELISEO: (unintelligible) did you travel directly? (inintelligible) viajo directo?

ANA: Humm? Yes. I came directly from San Juan to New York. Humm? Si. Me vine directo desde San Juan a Nueva York

ELISEO: Well, and you were in San Juan yesterday? Bueno, y tu estabas ayer en San Juan?

ANA: Yes. I was in San Juan yesterday. Si. Yo estaba ayer en SanJuan.

ELISEO: I went to San Juan, I went to the airport (unintelligible) I was in the airport until three. Yo fui a San Juan, fui al aereopuerto (inintelligible) estube en el aereopuerto hasta las tres.

ANA: But then you, you, how did you make your route from Barranquilla. Pero entonces tu, tu como hiciste la ruta, de Barranquilla.

ELISEO: <sup>no</sup> I came (unintelligible) from Barranquilla to Santo Domingo. <sup>no</sup> Yo me vine desde (inintelligible) Barranquilla a Santo Domingo.

ANA: Humm Humm

ELISEO: Santo Domingo to Mayaguez, Mayaguez to San Juan. Santo Domingo a Mayaguez, Mayaguez a San Juan.

ANA: Oh, well.

ELISEO: (unintelligible) San Juan.

ANA: Who would have known it. I was in San Juan yesterday.

ELISEO: At what time?

ANA: Well I was there all day yesterday.

ELISEO: But at what time you aren't (unintelligible)

ANA: No, not at the airport.

ELISEO: Where were you?

ANA: Well at the center in some hotel over there. No not that.

ELISEO: (unintelligible) This one found a boyfriend and she stayed over there.

ANA: No. How can you think that, no!

ELISEO: Humm.

ANA: Well yes my love, at least we've already found one another and we are together. Humm?

ELISEO: (unintelligible) What's wrong? ~~what hurts?~~

ANA: Everything inside hurts me it must be the root that is damaged or something (unintelligible) it hurts me.

ELISEO: Humm.

ANA: (Unintelligible) and what's new?

ELISEO: (unintelligible) well nothing

ANA: Did my mother send a pair of pants with you for me? The truth is that (unintelligible) that you didn't (unintelligible)

ELISEO: I called Bogota. I've called my house. I've called all over. (unintelligible) where and what happened and I said, no nothing ~~today~~ (unintelligible)

Ah, ya.

(inintelligible) San Juan.

Quien lo hubiera sabido, yo estaba ayer en San Juan.

A que hora?

Pues ayer estube todo el dia alli.

Pero a que hora usted no esta (inintelligible)

No, En el aereopuerto no.

Donde estaba?

Pues en el centro en un hotel por allia. No que no.

(inintelligible) esta se encontro con un novio y se quedo por allia.

No, como se te ocurre, no!

Humm.

Pues si mi amor, si quiere que ya, ya nos encontramos y ya estamos los dos. Humm?

(inintelligible) que tiene que te duele?

Me duele todo por dentro la raiz debe ser que esta mala o algo (inintelligible) me duele.

Humm.

(inintelligible) y que mas.

(inintelligible) pues nada

Y mi mami no me mando un pantalon con tigo? A verdad que (inintelligible) tu no le (inintelligible)

He llamado a Bogota. He llamado a mi casa. He llamado a todas partes. (inintelligible) a donde que paso y dije no nada. ~~general~~ (inintelligible)



ANA: How did things go for you?  
Were you with any other old lady?

ELISEO: (laughs) Silly  
*Well silly because you are*

ANA: (unintelligible) such a lover and all.  
*Tonta no, porque como tu eres*  
*(inintelligible)*  
*una mujeriego y todo.*

ELISEO: (unintelligible)

ANA: (unintelligible) no I was desperate. I hope that I get there and I find him there...and when I arrived and nothing

ANA / ELISEO: (Unintelligible)

ANA: Unintelligible) When I arrived here I was checking in. I was there in reception. I took a while because there were more people checking in.

ELISEO: (Unintelligible)

ANA: I had a problem with the tickets. I'm in Puerto Rico then she...must have thought that

ELISEO: (unintelligible)

ANA: Huh?

ELISEO: (unintelligible)

ANA: (unintelligible)

(UNIDENTIFIABLE NOISES)

(RUIDOS NO IDENTIFICABLES)

ANA: Oh my God!

Como te fue, tu no estuviste con ninguna otra vieja  
(rie) tonta  
*Tonta no, porque como tu eres*  
(inintelligible)  
(inintelligible)

(inintelligible) no yo estaba desesperada  
ojala que yo llegue y lo encuentre ahí y cuando llego y nada

(inintelligible)

(inintelligible) Cuando llegue aqui registrandome. Yo estube alli en la recepcion, me demore un poquito porque habia mas gente alli Registrando.

(ininteligible)

Tube un problema con los pasajes. Estoy en Puerto Rico entonces ella...pensaria que

(inintelligible)

Huh?

(inintelligible)

(inintelligible)

Ay Dios mio!

Sound of dialing

Person walking

UNKNOWN MALE: Coming down later.  
He'll be down in  
the lobby later.  
(unknown sound)  
all right. Later,  
later tonight if  
you get change,  
you know  
(unknown sound) O.K.

(unidentifiable sound)  
ruidos no identificables

(long pause - pausa)

(sound of telephone ringing)  
telefono sonando

FEMALE: Yes, ye (pause)  
14 huh? no one,  
no one (pause)  
alright, alright.  
Ok. O.K. WOW!

Si, si (pausa) 14 huh? nadie, nadie  
(pausa) alright, alright. OK. Ok.  
(pausa) WOW!

(some one sneezes)  
alguien estornuda)

(long pause - pausa)

Female singing in Spanish

(unidentifiable sounds)  
sonidos no identificables

(Unintelligible voices in background - sounds of traffic)  
voices no identificables en fondo - sonidos de trafico

(sounds of T.V.)  
sonidos de televisor

(long pause - pausa)

(Inaudible)

A 70

ELISEO: (Unintelligible) (Unintelligible)

ANA: (Unintelligible) I called, I called (Unintelligible) yo llame, yo llame

ANA: No! No!

ELISEO: (Unintelligible) (Unintelligible)

ANA: No! (Unintelligible)

ELISEO: (Unintelligible) (Unintelligible)

ANA: Yes (Unintelligible) just imagine that I got to Barranquilla... (Unintelligible) imaginate que yo llegue a Barranquilla...

ELISEO: Yes. Si.

ANA: Then... Entonces...

ELISEO: When did you get there, Monday? Cuando llego, el lunes?

ANA: Don't you remember that I left on Tuesday, on Tuesday to Barranquilla... No te acuerdas que yo me vine el martes, el martes a Barranquilla...

ELISEO: You got there and you had a flight to, to, to Puerto Rico and I was (Unintelligible) Tu llegaste y tenias vuelo para, para, para Puerto Rico y estuve

ANA: Oh No! (Unintelligible) who would have known it. Ay no! (Unintelligible) quien lo hubiera sabido.

ELISEO: Well then tell me what happened. Pues dime que paso!

ANA: No, no nothing happened, I lost... No, no paso nada, perdí...

ELISEO: Your mother told me something and I felt rum like my head was splitting. Tu mama me dijo algo y rum se me rompio la cabeza.

ANA: It's just that she misunderstood me. Fue que ella me entendio mal.

ELISEO: Well then tell me what happened. What happened? Tell me, Tell me about it. Pues dime que paso. Que paso? Dígame, cuénteme.

ANA: Nothing happened. No paso nada.

ELISEO: No that (Unintelligible) had problems over there in Puerto Rico, O Virgen (Unintelligible) but tell me where she is because I'm going to Puerto Rico, I'm going (Unintelligible) No que (Unintelligible) tuvo problemas alla en Puerto Rico. Ay virgen (Unintelligible) pero digame a donde esta porque yo voy para Puerto Rico yo me voy (Unintelligible)

ANA: so my love, just imagine that I got to Barranquilla. All the problem started with Barranquilla... No mi amor imaginate que yo llegue a Barranquilla. Todo el problema empezo con Barranquilla...

ELISEO: (Unintelligible) (Unintelligible)

ANA: What I said was about the tickets, and I'm sure she understood something else, who knows what. Yo le dije fue de los pasajes y ella me entendio seguro algo otra cosa quien sabe que.

ELISEO: (unintelligible) a drink (inintelligible) un trago

ANA: Well, if you want we can go to my room and we'll drink there. Pues si quieras vamos a mi cuarto y tomamos allá.

ANA: Because this is all closed Porque esto está todo cerrado

ELISEO: (Unintelligible) (Unintelligible)

ANA: No, well then in Barranquillas just imagine I got there early No. Entonces en Barranquilla pues imaginate yo llegue temprano

ELISEO: AND IN Puerto Rico everything came out all right? Y allá en Puerto Rico todo salió bien?

ANA: Yes everything fine. Si todo bien.

ELISEO: There were no problems? No hubo problemas

ANA: No my love, what happened was that since I, I missed the plane in Barranquilla... No, lo que pasó mi amor fue que como yo me, me dejó el avión ese día en Barranquilla...

ELISEO: (unintelligible) Where? (Inintelligible) Donde?

ANA: In Barranquilla I missed the plane. En Barranquilla me dejó el avión.

ELISEO: On Tuesday? El Martes?

ANA: I missed the plane on Tuesday. I had to stay until Wednesday (unintelligible) El martes me dejó el avión. Me tocó quedarme hasta el miércoles (inintelligible)

ELISEO: (unintelligible) At what time did you get to Barranquilla? A qué hora llegó a Barranquilla?

ANA: At about nine. Como a las nueve.

ELISEO: At nine? In the morning? A las nueve? De la mañana?

ANA: Yes. Then... Si. Entonces...

ELISEO: (Unintelligible) I was in Barranquilla and I left on Tuesday, I left on Tuesday at about 11:30 or 12:00 and I went to, to (unintelligible) and then they told me "She'll leave on the same flight with me, but in Barranquilla I (unintelligible) everywhere (unintelligible) (inintelligible) yo estaba en Barranquilla, y salí el Martes salí a las como a las 11:30 o 12:00 y me fui a, a (ininteligible) entonces me dijeron "ella se fue" a bueno entonces se va en el mismo vuelo con migo, pero yo en Barranquilla la busqué por todas partes (unintelligible)

ANA: No, I missed the plane in Barranquilla and I had to stay...that night in Barranquilla. No, si en Barranquilla me dejó el avión y me tocó quedarme... esa noche en Barranquilla,

ELISEO: (unintelligible)

(inintelligible)

ANA: Yes, for, for, for the drug traffic?

Si, para, para, para el trafico de drogas?

ELISEO: Yes.

Si.

ANA: No, then just imagine, I left Barranquilla de following day at about 3:30 because that's a problem in Barranquilla because the airline that I was going to travel on was the K L M.

No, entonces imaginate, sali de Barranquilla al otro dia como a las 3:30 porque eso es un problema en Barranquilla porque la linea por que yo iba a volar era la K L M.

ELISEO: Yes.

Si.

ANA: And the K L M didn't have a plane leaving until Saturday.

Y de K L M no salia avion si no hasta el Sabado.

ELISEO: (unintelligible)

(inintelligible)

ANA: Huh?

Huh?

ELISEO: (unintelligible)

(inintelligible)

ANA: (unintelligible) no, no, it was alright, but since I had missed the K L M flight there is only (unintelligible) two flights a week to Curacao from K L M. Then they told me (unintelligible) at the latest tomorrow for Curacao. Then (unintelligible) tell K L M to sign, to sign the ticket on Aereo Condo flight or some thing. The old man didn't want to (unintelligible) that Avianca. Well they put me on that (unintelligible) Well, then they told the old man (unintelligible) then they signed the ticket over to Aereo Condo. I Left the following day to Curacao---

(inintelligible) no, no, estaba bien pero como a mi me habia dejado el vuelo de K L M no hay si no (inintelligible) dos vuelos a la semana a Curacao de K L M. Entonces me dijeron (inintelligible) a mas tardar manana a Curacao. Entonces (inintelligible) digale a K L M que endoce, que endoce el pasaje a Aereo Condo o algo. El viejo no queria (inintelligible) Avianca. Bueno, me pusieron alli (inintelligible) entonces pues le dijo al viejo (inintelligible) me endosaron el ticket to Aereo Condo. Me fui al otro dia. Me fui al otro dia hasta Curacao...

ELISEO: At what time did you arrive?

A que hora llegaste alla?

ANA: At about eight.

Como a las ocho.

ELISEO: (unintelligible)

(inintelligible)

ANA: (unintelligible) and I was calling and calling to Columbia and (unintelligible) I don't know what.

(inintelligible) y yo era llama y llama a Colombia y (inintelligible) no se que.

ELISEO: (unintelligible) busy, busy all the time.

(inintelligible) ocupado, ocupado todo el tiempo.

ANA: Yes, what a terrible thing. What do I do if I don't see him? I had agreed to meet him here.

Si, que cosa tan terrible. Si yo no 'o veo a el que hago? Dios Mio. Yo quede en encontrarme con el aqui.

ELISEO: (unintelligible)

(inintelligible)

ANA: Oh no.

Oh no.

(INAUDIBLE FOR TWO MINUTES)

ELISEO: (Unintelligible) (Inintelligible)

ANA: I told her I would call tomorrow. Then she was at ease because she knew that I was here. Yo le dije que yo la llamaba mañana. Entonces pues ella estaba mas tranquilla porque sabia que ya yo estaba aqui.

ELISEO: (Unintelligible) I am here waiting lady. (Inintelligible) estoy aqui esperando senora.

ANA: (Unintelligible) (Inintelligible)

ELISEO: (Unintelligible) That she's going to arrive at that hotel McAlpin (unintelligible) Lady I'm waiting here (inintelligible) que llego al hotel ese hotel McAlpin (inintelligible) senora aqui estoy yo esperando.

ANA: (Unintelligible)

ELISEO: (Unintelligible) (Inintelligible)

ANA: Well yes (unintelligible) someone here, this room is cold. Pues si (inintelligible) alguien aqui. Esta frio este cuarto.

ELISEO: (Unintelligible) (Inintelligible)

ANA: Well yes my love. No. those are some (unintelligible) with so many people traveling and all those planes were completely full and well then I couldn't get one to leave early. I couldn't get it then you know what I didn't go to Philadelphia. But since everything,... said Philadelphia. Pues si mi amor. No esas son unas (inintelligible) con tanta gente que viaja y todo esos aviones eran con cupo completo y yo pues no encontraba para salir temprano no, y estar aqui temprano. No encontraba, entonces sabe lo que yo hice? Yo no fui a Philadelphia. Si no que como todo... decia Philadelphia.

ELISEO: (Unintelligible) Did you travel directly? (inintelligible) viajo directo?

ANA: Hummm? Yes I came directly from San Juan to New York. Hummm? Si. Me vine directo desde San Juan a Nueva York

ELISEO: Well , and you were in San Juan yesterday? Bueno, y tu estabas ayer en San Juan?

ANA: Yes, I was in San Juan yesterday. Si yo estaba ayer en San Juan.

ELISEO: I went to San Juan, I went to the airport (unintelligible) I was in the airport until three. Yo fui a San Juan, fui al aeropuerto (inintelligible) estuve en el aeropuerto hasta las tres.

ANA: But then you, you, how did you make your route from Barranquilla... Pero entonces tu, tu como hiciste la ruta, de Barranquilla...

ELISEO: (Unintelligible) No I came from Barranquilla to Santo Domingo (Inintelligible) No yo me vine de Barranquilla a Santo Domingo.

ANA: Hummm.

ELISEO: Santo Domingo to Mayaguez Mayaguez to San Juan. Santo Domingo a Mayaguez, Mayaguez a San Juan.

ANA: Oh, well.

ELISEO: Yesterday I was in San Juan (unintelligible)

ANA: Who would have know it. I was in San Juan yesterday.

ELISEO: At what time?

ANA: Well I was there all day yesterday.

ELISEO: But at what time (Unintelligible)

ANA: No, not at the airport.

ELISEO: Where were you?

ANA: Well at the center in some hotel over there, No not that

ELISEO: This one found a boy friend and she stayed over there.

ANA: No. How car you think that, no.

ELISEO: Humm..

ANA: Well yes my love, at least we've already found one another and we are together  
Humm?

ELISEO: (Unintelligible) What's wrong?

ANA: Everything inside hurts me it must be the root that is damaged or something (unintelligible) it hurts me.

ELISEO: Humm.

ANA: (Unintelligible) and what's new?

ELISEO: (Unintelligible) well nothing

ANA: Did my mother send a pair of pants with you for me? The truth is that (unintelligible) that you diin't (unintelligible)

ELISEO: I called Bogota. I've called my house, I've called all over (unintelligible) where and what happened and I said, no nothing lady (unintelligible)

Ay, ya.

Estuve ayer en San Juan (inintelligible)

Quien lo hubiera sabido, yo estaba ayer en San Juan.

A que Hora?

Pues ayer estuve todo el dia alli.

Pero a que hora (inintelligible).

No. En el aeropuerto no.

Donde estaba?

Pues en el centro en un Hotel por ahi. No que no

Esta se encontro con un novio y se quedo por alla.

No, como se te ocurre, no.

Humm..

Pues si mi amor, siquiera que ya ya nos encontramos y ya estamos los dos  
Humm?

(Inintelligible) que tiene?

Me duele todo por dentro la raiz debe ser que esta mala o algo (inintelligible) me duele.

Humm.

(Inintelligible) y, que mas?

(Inintelligible) pues nada

Y mi mami no me mando un pantalon contigo? A verdad que (inintelligible) tu no le (inintelligible)

He llamado a Bogota. He llamado a mi casa. He llamado a todas partes. (inintelligible) a donde y que paso y dije no nada. senora (inintelligible).

ANA: Well, no I took the route that you told me, see? But the problem was... it all started when I missed the plane in Barranquilla, but it was just that there were a great amount of people. I missed that plane (unintelligible) in Barranquilla, and I arrived... and the old man didn't...

ELISEO: (Unintelligible) at what time did you get to Barranquilla?

ANA: Huh?

ELISEO: At what time did the plane arrive at Barranquilla?

ANA: At 9:00 in the morning.

ELISEO: (unintelligible)

ANA: No on Tuesday (unintelligible) early hours of the morning

ELISEO: (Unintelligible)

ANA: On Tuesday (unintelligible) Tuesday. I had to stay over on Tuesday and return on Wednesday towards Curacao. By Thursday I was in San Juan. I was just at the center.

ELISEO: (unintelligible) I was in San Juan Thursday.

ANA: (unintelligible) to San Juan?

ELISEO: Today?

ANA: Here today.

ELISEO: At what time did you arrive today at the San Juan airport?

ANA: (Unintelligible) at a little past three.

ELISEO: Today? What's wrong with you. I notice that you seem strange.

ANA: Why? What do I have do I look pale?

ELISEO: I think that you are lying to me.

ANA: How could a lie to you? about what my love? (unintelligible) how suspicious you are my love No (unintelligible)

No pues yo hice la ruta que tu me dijiste, ves? Pero el problema fue... todo empezo desde que me dejo el avion en Barranquilla, pero era que eran cantidades de gente. Me dejo ese avion, (ininteligible) en Barranquilla, y llegue... y el viejo no...

(inintelligible) a que hora llego a Barranquilla?

Huh?

El avion a que hora llego a Barranquilla?

A las 9:00 de la mañana.

(inintelligible)

No el Martes (ninteligible) madrugada.

(Inintelligible)

El Martes (inintelligible) martes. Me toco quedarme ese martes y venirme el miercoles para Curacao. El jueves ya estaba en San Juan. Y yo estaba en el centro.

(inintelligible) El jueves yo estaba en San Juan.

(inintelligible) a San Juan?

A hoy?

Hoy aqui.

A que hora llegaste en San Juan al aeropuerto hoy?

(inintelligible) como a las tres y pico.

Hoy? que tienes? te noto rara

Por que? Que tengo? Estoy palida?

Me da la impresion que me estas mintiendo a mi.

Como te voy a mentir? En que mi amor? (inintelligible) como eres de desconfiado mi vida. No (inintelligible).

ELISEO: (unintelligible) (inintelligible)

ANA: How did things go for you? Were you with any other old lady? Como te fue? Tu no estuviste con ninguna otra vieja?

ELISEO: (laughs) silly (rie) tonta

ANA: Not silly, because you are such a lover and all. Tonta no, porque como tu eres tan mujeriego y todo.

ELISEO: (unintelligible) (inintelligible)

ANA: (unintelligible) no I was desperate. I hope that I get there and I find him there...and when I arrived and nothing. (inintelligible) no yo estaba desesperada. Ojala que yo llegue y lo encuentre ahi y cuando llego y nada.

ANA: (unintelligible) (inintelligible)

ELISEO: (unintelligible) (inintelligible)

ANA: (unintelligible) when I arrived here I was checking in. I was there at reception, I took a while because there were more people there checking in. (inintelligible) cuando llegue aqui registrandome. Yo estube alli en la recepcion, me demore un poquito porque habia mas gente alli registrando.

ANA: (unintelligible) (inintelligible)

ELISEO: (unintelligible) (inintelligible)

ANA: I said, Mommie I'm here. I had a problem with the tickets. I'm in Puerto Rico, then she must have thought that.. Dije mami estoy aqui. Tube un problema con los pasajes. Estoy en Puerto Rico, entonces ella.. pensaria que..

ELISEO: (unintelligible) (inintelligible)

ANA: Huh? Huh?

ELISEO: (unintelligible) (inintelligible)

ANA: (unintelligible) (inintelligible)

(UNIDENTIFIABLE NOISES)  
ruidos no identificables

ANA: Oh my God! Ay Dios Mio!

2 THE COURT: There are other motions which  
3 I believe are still open.

4 On behalf of Sanchez Rueda, Mr. Fisher has  
5 moved for discovery of various and certain things. The  
6 first thing basically is a list of all witnesses. That  
7 motion is denied.

8 Should the government have anyone, either  
9 in protective custody or in penal custody, they are di-  
10 rected to make that witness available to Mr. Fisher for  
11 interview. There is no requirement that the witness  
12 talk to Mr. Fisher.

13 The second request basically is to disclose  
14 whether or not a co-defendant is a cooperating individual.  
15 That is denied.

16 The third request concerns promises to witness  
17 and records of their criminal activity. There is no need  
18 to turn these things over until the time required by statute.  
19 See 18 U.S.C. Section 3500.

20 The fourth request is for an expansion of the  
21 bill of particulars to include those present at all the overt  
22 acts, in effect, this basically is a reiteration of the first  
23 request. The first request was denied and so is the fourth.

24 There is also a request by Mr. Fisher on behalf of  
25 defendant Sanchez Rueda for leave to make further motions.

2 That request is granted.

3 There is some argument as to whether there might  
4 be Brady type material in the possession of the government.  
5 I understand there is none. But if there is , or if, any  
6 such material comes into the possession of the government,  
7 it is to be turned over immediately. Having been involved  
8 in both the prosecution and defense of criminal cases, it  
9 is my firm belief that both sides must be adequately prepared  
10 prior to trial.

11 The next two motion s concern the suppression of  
12 certain evidence seized by the government.

13 The defendants Eliseo Sanchez Rueda and Alphonzo  
14 Carmargo are charged with a conspiracy to violate as well as  
15 with actual violations, of certain penal laws of the United  
16 States involving controlled drugs and narcotics traffic.  
17 Each has moved to suppress those things seized from their  
18 persons or in the case of Carmargo, from his room. The motion  
19 are grounded basically on the allegation that the arrest of  
20 each was unlawful and that the search of Carmargo's room was  
21 tainted by the unlawful arrest and the alleged consent to  
22 the search was not constitutionally valid.

23 It appears from the testimony f various  
24 witness, that while attempting to pass through  
25 United States Customs & Immigration Department

2 at the International Airport in Puerto Rico on June 24, 1976,  
3 a woman by the name of Ana Lupe Rodriguez was found in  
4 possession of a piece of luggage which had a false bottom. In  
5 the false bottom there appears to have been three kilograms  
6 of cocaine. Ana Lupe Rodriguez agreed to cooperate with  
7 agents of the Drug Enforcement Administration. Miss Rodriguez  
8 told the Agents of the Drug Enforcement Administration that  
9 the suitcase was given to her by the defendant Sanchez Rueda,  
10 on June 22nd and that subsequent to receiving the drugs, she  
11 had travelled by various intermediate stops from Barranquilla,  
12 Colombia to Puerto Rico. Apparently the agent was told that  
13 Sanchez Rueda had given her a bogus passport and that she had  
14 traveled with a person called "El Viejito", which upon being  
15 translated from Colombian Spanish means, "the little old man."  
16 At the earing the government failed to produce Ana Lupe  
17 Rodriguez.

18 It was suggested, however, during the suppression  
19 hearing that Miss Rodriguez stated that El Viejito and Sanchez  
20 Rueda were partners. I was never told the when or how this  
21 information was conveyed to the agents. Apparently, Agent  
22 Amador and others working with him were given descriptions  
23 of Sanchez Rueda.

24 The Drug Enforcement Administration arranged for  
25 "controlled delivery" of the three kilos of cocaine at the

1 McAlpin Hotel on June 25, 1976. Ana Lupe Rodriguez came to  
2 New York and apparently was there equipped by DEA agents  
3 with a Kel transmitting device and a Nagra tape recorder. The  
4 agents arranged for a room not only for Ana Lupe Rodriguez,  
5 but also an adjoining room for themselves.

6 At some point during the evening of June 25th, the  
7 agents observed Ana Lupe Rodriguez meet with a man fitting  
8 the description that she had given of Sanchez Rueda.

9 \* The agents monitored through the Kel transmitter  
10 some but admittedly not all of what was being discussed by  
11 Sanchez Rueda and Miss Rodriguez.

12 Agent Amador was the only person present who was  
13 completely fluent in Spanish. The other agents had merely  
14 some knowledge of the language. Agent Amador indicated that  
15 he became fearful that the woman might be in physical danger.  
16 On cross examination, no one was able to satisfactorily  
17 explain the basis for their fear of violence. Apparently the  
18 defendant Sanchez Rueda was then arrested in the hallway of  
19 the hotel.

20 No delivery was made of the cocaine from Ana Lupe  
21 Rodriguez to the defendant Sanchez Rueda.

22 The arresting agent testified at the hearing that  
23 the sole factual basis for determining the probable cause to  
24 arrest Sanchez Rueda were statements by Ana Lupe Rodriguez.

2 These statements by an individual whose reliability is  
3 totally unknown to the agents, who was caught with incrimina-  
4 ting evidence, and whose statements tend to inculpate another  
5 individual, can hardly be a sufficient basis for probable  
6 cause. (See *Wong Sun v. United States*, 371 U.S. 471 (1963)  
7 where the Supreme Court found an arrest to be illegal on  
8 facts similar to these.) Uncorroborated information from a  
9 person of unknown reliability is simply not a basis for probab-  
10 cause.

11 Certainly the Kel transmissions can offer no corro-  
12 boration. First, it is clear that the government agents  
13 admitted that they did not monitor all of the transmission.  
14 Second, there is nothing on the tape of that transmission,  
15 which indicates that Rueda had any knowledge of the woman's  
16 involvement with illicit drugs.

17 On all the evidence and particularly on the credibi-  
18 lity of the various witnesses, I find that the arrest of  
19 Sanchez Rueda was made without probable cause.

20 At the time of his arrest, the arresting officers  
21 searched Sanchez Rueda for security reasons. This is proper  
22 and appropriate. Thereafter Agent Amador for a second  
23 time searched him, at which time he discovered in his back  
24 right rear pocket a matchbook cover which contained two  
25 phone numbers. One phone number turned out to be the phone

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2 number of the Holland Hotel located between 9th Avenue and  
3 8th Avenue on 42nd Street.

4 Since I have found the arrest to be unlawful, the  
5 matchbook which is the fruit of a search incident to an  
6 illegal arrest, must be suppressed.

7 The government has already conceded that the search  
8 of Sanchez Rueda's room was illegal.

9 After the defendant Sanchez Rueda was arrested and  
10 in confinement it appears that the three agents of the Drug  
11 Enforcement Agency went to Holland Hotel and ascertained that  
12 in a room corresponding to another number on the matchbook  
13 there was a small 76 year old, feeble man named Alphonzo  
14 Carmargo.

15 The agents after leaving the desk clerk went to the  
16 room in question and apparently had little or no success  
17 gaining immediate admittance. The desk clerk who spoke Spanish  
18 was on the telephone and was asked to join the group outside  
19 Mr. Carmargo's room.

20 It cannot be denied that the agents identified  
21 themselves through the desk clerk, one James Vega, as agents  
22 from the Immigration and Naturalization Service. Once the  
23 door was opened, three agents went inside and showed him  
24 badges or what is called pocket commissions.

25 A cursory search was made of the room. Carmargo

2 was asked by the agents what certain suitcases contained and  
3 he advised them, according to his testimony, which is not  
4 really denied by the government witnesses, that the bags  
5 contained money and that the money was his.

6 Mr. Carmargo was removed at this point to the  
7 headquarters of the Drug Enforcement Agency and there wrote  
8 up an extraordinarily brief and simple consent to have the  
9 agents search his room and seize whatever they find.

10 It is his contention that they had told him at  
11 that point that the money, if left at the hotel, would be  
12 lost.

13 The defendant Carmargo does not deny that in fact  
14 he wrote and signed what is a yellow foolscap, consent to  
15 search the room.

16 The suitcase in question plus money found in certain  
17 umbrellas produced an amount which is approximately \$69,000.

18 During this hearing, the defendant Carmargo testified  
19 that he had shown the vice consul of Bogota \$20,000 in cash  
20 and that the vice consul had endorsed on his passport the fact  
21 that he was required to have at least \$5,000 cash to be ad-  
22 mitted to the United States as a tourist.\*

23 In order to determine whether probable cause exist  
24 for the arrest of Carmargo, we must look to the moment of the  
25 arrest. In a case called Henry v. the United States,

\* I am not certain whether such a requirement exists.

2 361 United States 98, 103, 1958, the Supreme Court indicates  
3 that an arrest occurs when an individual is restricted in his  
4 liberty. If three agents come into a man's room and take him  
5 out to be "questioned", particularly where he does not even  
6 speak English is old, feeble, and under medication, it is my  
7 belief that the liberty of his movement has been restricted.  
8 Judge Arnold Bauman indicated clearly "No formula need be  
9 uttered. No declaration made to the person arrested. It is  
10 sufficient that he be aware that he has been deprived of his  
11 full liberty." That ruling is found in a case called U.S.  
12 v. Gonzalez, 362 Fed. Supplement 415, at 420, 1973,  
13 Southern District of New York.

14 Here it appears clear to me, that where the defendant  
15 Carmargo was aroused from his sleep between 2:30 and 3 o'clock  
16 in the morning, still standing in his underwear, was told to  
17 get dressed and go with the agents for questioning, an arrest  
18 was made. But I have serious concern and I cannot find  
19 probable cause for that arrest.

20 The agents relied upon Ana Lupe Rodriguez who they  
21 had caught with a large quantity of cocaine. To the best  
22 of my belief her description of a man as El Viejito, is in-  
23 sufficient to support an arrest. From the evidence shown at  
24 this hearing, the corroboration suggested by the government is  
25 totally insufficient. See Wong Sung v. the United States,

2 371 U.S. 411, at Page 486, 1963.

3 The government also contends that consent to the  
4 search was freely and voluntarily made. I am not obliged to  
5 reach the issue of whether the consent was in fact freely and  
6 voluntarily made. It is sufficient that the defendant was  
7 deprived of his liberty by an illegal arrest and that the  
8 consent was in some way obtained from him during that illegal  
9 detention.

10 But in any event it should be pointed out that the  
11 defendant Carmago is 76 years old, went to the third grade  
12 in grammar school and speaks no English. While he was involved  
13 as a middleman in currency exchange and real estate and even  
14 perhaps some foreign travelling, we are not dealing, particu-  
15 larly at 3 o'clock in the morning, with the most sophisticated  
16 defendant. Even the agents who arrested him, particularly  
17 Agent Amador, indicated he was a little shaky at the time of  
18 his arrest. I can well understand it. It was at this time  
19 that he "gave his consent".

20 The government agent testified that at least on  
21 two occasions he read the defendant "Miranda warnings" and  
22 recited his constitutional rights to him. At least  
23 one government witness and the defendant testified that Agent  
24 Amador partially dictated the consent to search signed by the  
25 defendant Alphonzo Carmago. It is of interest to me and I

1 am sure it would be to any reviewing Court, that there is no  
2 mention of constitutional rights, Miranda warnings or anything  
3 else in that consent.

4           Although, as I have said, I feel it to be unnecessary  
5 if there be a need for a finding of this Court as to the con-  
6 sent to be searched, rather than have it relayed to me again,  
7 I will make a finding. It was involuntarily.

8           Carmago contends that the money illegally seized  
9 from his room must be returned since it is not contraband  
10 within the meaning of Title 21 section 881. There is nothing  
11 in the record to show that it falls within those provisions.  
12 Accordingly, the government is directed to turn over that  
13 portion of the money not presently subject to a tax jeopardy  
14 assessment. See *United States v Eliseo Sanchez Rueda*,  
15 76 Criminal 625.

16           The defendants have also moved for the dismissal  
17 of the indictment. Basically their argument is that the  
18 indictment is not based upon sufficient competent evidence.  
19 I do not believe that such a motion properly lies at this  
20 time. The government will have its chance to prove its case  
21 and the defendants to appropriately defend against it. See  
22 *United States v Tane*, 329 F. 2d 848 (2d Cir. 1964).

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2 Since I believe that the above memorandum is  
3 sufficiently clear, particularly as to not require further  
4 clarification, it is to be considered so ordered.

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U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

ELISEO SANCHEZ RUEDA,  
a/k/a "Guardia Crozzeo", and  
JESUS FONI P.,  
a/k/a "Alphonse Gomango,"  
a/k/a "El Viejito,"NOTICE OF APPEAL

76 Cr. 625 (ED)

Defendants.

NOTICE OF APPEAL TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT

NOTICE is hereby given that the United States of America hereby appeals, pursuant to Title 18, United States Code, Section 3731, to the United States Court of Appeals for the Second Circuit from the order of the Honorable Kevin T. Duffy, United States District Judge for the Southern District of New York, entered August 31, 1976, granting the motions by defendants Eliseo Sanchez Rueda and Jesus Foni P. to suppress all evidentiary items obtained and seized after their arrests.

Dated: September 24, 1976

New York, New York

ROBERT A. FISHER, II  
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Southern District of New York  
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of America

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